SUPREME COURT OF THE UNITED STATES.

No. 449.

HENRY R. HAZLEHURST AND WILLIAM D. WEIGAND, APPELLANTS,

vs.

THE STEAMER "LULU"—THE NEW YORK GUARANTY AND INDEMNITY COMPANY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Record from district court	1	1
Libel of Skinner & Forsyth	2	1
Schedules or accounts	4	2
Attachment	7	4
Marshal's return and advertisement	8	4
Claim and answer	9	5
Petition of New York Guaranty and Indemnity Company	12	6
Order for sale	13	7
Marshal's account of sales	13	7
Libel of Emily and Byron H. Holmes	14	7
Exhibit A	17	9
Attachment	20	11
Answer	21	11
Exceptions to claim and answer	24	12
Libel of Samuel R. Waite	25	13
Account	27	14
Attachment	27	14
Claim and answer	28	14
Libel of Henry Kimberly	31	16
Schedules	33	17
Attachment	36	18
Claim and answer	37	19
Libel of R. G. Rieman and Alfred Poor	40	20
Account	42	21
Attachment	43	22
Answer and claim	44	22

	Original.	Print.
Petition	47	23
Libel of John J. and William H. Abrahams	48	24
Account	50	25
Attachment	50	25
Claim and answer	51	26
Petition and order	55	27
Libel of James Boyce	56	28
Account	58	29
Attachment	58	29
Claim and answer	59	30
Petition	62	31
Libel of Hazlehurst and Weigand	63	32
Accounts	66	34
Attachment and return	77	40
Claim and answer	77	40
Petition and order	81	42
Libel of Coleman & Bailey	82	42
Schedule, Exhibit A	83	43
Attachment and return	88	46
Claim and answer	88	46
Petition and order	92	48
Plea	92	48
Petition	93	49
Order consolidating cases	94	49
Security for costs	95	50
Decree of district court	96	50
Appeal	97	51
Appeal bond	98	51
Deposition of Henry Kimberly	101	53
Paper H. K., No. 1	103	53
Deposition of Joseph Rundle	111	59
Deposition of William Pemberton	112	59
Deposition of James A. Skinner	112	59
Deposition of William Skinner	114	60
Deposition of Samuel H. Daneker	114	60
Deposition of John E. Mills	115	61
Deposition of William H. Forsyth	115	61
Paper S. F., No. 1	118	62
Paper S. F., Nos. 2 and 3	119	63
Paper S. F., Nos. 4 and 5	120	63
Deposition of William P. Williamson	120	63
Deposition of Henry G. Carey	122	64
Deposition of Washington Kelly	123	65
Deposition of Edwin Bailey	124	65
Deposition of John T. Johnson	125	66
Deposition of William H. Abrahams	126	66
Deposition of James C. Sellman	127	67
Deposition of Washington Burnett	127	67
Deposition of James Boyce	128	67
Exhibit L, No. 1	129	67
Deposition of James R. Tarleton	129	68
Deposition of Alfred Poor	130	68
Deposition of John T. Johnson	131	68
Paper O, Nos. 1, 2, 3, and 4	132	69
Deposition of Byron H. Holmes	132	69

	Original.	Print.
Deposition of Washington Kelly (cross-examination)	133	70
Deposition of William P. Williamson (cross-examination)	137	71
Deposition of Alfred Poor (cross-examination)	138	72
Deposition of James Boyce (cross-examination)	139	73
Deposition of William H. Abrahams (cross-examination)	143	75
Deposition of William V. Clift	147	76
Deposition of Edwin Bailey (cross-examination)	148	77
Depositon of William Meade Addison	151	78
Deposition of A. Merrill Addison	152	79
Deposition of David F. Keeling	153	79
Exhibit N. Y. G. and I. Co., No. 1	155	80
Exhibit N. Y. G. and I. Co., No. 2	160	83
Deposition of John T. Johnson	162	84
Deposition of Joshua J. Henry	163	84
Exhibit N. Y. G. and I. Co., No. 3	166	86
Exhibit N. Y. G. and I. Co., Nos. 4, 5, and 6	170	88
Exhibit N. Y. G. and I. Co., No. 7	172	89
Opinion	175	91
Decree of circuit court	180	93
Appeal and appeal bond	181	93
Agreement	183	94

1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November (being the seventh day of the same month), in the year of our Lord one thousand eight hundred and sixty-eight—present, the Honorable Salmon P. Chase, Chief Justice of the Supreme Court; Andrew Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk—among other, were the following proceedings, to wit:

CLAIMANT OF THE STEAMER "LULU," appellants,
vs.
JAMES A. SKINNER AND OTHERS, appellees.

Be it remembered that heretofore, to wit, on the fifth day of September, in the year of our Lord one thousand eight and sixty-seven, the claimant of the steamer "Lulu," by his attorney, William M. Addison, esquire, filed in the circuit court here the transcript of a record from the district court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in June (being the fourth day of the same month), in the year of our
2 Lord one thousand eight hundred and sixty-seven—present, the Honorable William F. Giles, judge of the Maryland district; Andrew Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk—among other, were the following proceedings, to wit:

JAMES A. SKINNER AND WILLIAM H. FORSYTH
vs.
STEAMER "LULU."
Libel.—Filed 11 March, 1867.

[50-cents U. S. int. rev. stamp.]

In admiralty.

To the Honorable William Fell Giles, judge of the district court of the United States for the district of Maryland:

James A. Skinner and William H. Forsyth, ship-builders, of Baltimore City, exhibit this their libel against the steamer "Lulu"—now lying at the port of Baltimore, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court—her machinery, tackle, sails, boats, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime. And thereupon the said James A. Skinner and William H. Forsyth, trading as aforesaid, do allege and articulately propound as follows, to wit:

First. That the said steamer "Lulu" was at the time when the
3 repairs hereinafter mentioned were made a foreign vessel, owned by some person or persons not residing in the State of Maryland, and who are to the libellants unknown, and is of the burthen of about —— tons.

Second. That at various times during the months of October, November, and December, in the year eighteen hundred and sixty-six, and January and February, of the year eighteen hundred and sixty-seven, the said steamer "Lulu," then lying at the port of Baltimore aforesaid, and within the flux and reflux of the sea, the said master of said steamer represented to the libellants that the said steamer stood in need of the repairs mentioned in the annexed schedule or accounts in order to render her seaworthy and fit to proceed to sea on her intended voyage; and that these libellants, in pursuance of such representation and request, at the times requested, undertook to repair and did repair said steamer by furnishing the materials and performing the work and labor mentioned and set forth in said schedules or accounts, the value of which materials, work, and labor amount in the whole to nine hundred and eight dollars and fourteen cents.

Third. That said repairs were so made on the credit of said steamer, and were suitable, proper, and necessary for the purpose of enabling the said steamer to proceed to sea with safety.

Fourth. That the aforesaid sum of nine hundred and eight dollars and fourteen cents still remains wholly unpaid and due to the libellants, although payment of the same has often been requested.

4 Fifth. That all and singular the premises are true.

Wherefore the libellants pray that process, in due form of law, may issue against the said steamer "Lulu," her machinery, tackle, sails, boats, apparel, and furniture, and that this honorable court will pronounce for their aforesaid demand, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain and as this court is competent to give in the premises.

JOHN M. FRAZIER,
Proctor for Libellants.

Schedules or accounts.

BALTIMORE, *March 11th*, 1867.

Steamship Lulu & owners to Chas. W. Daneker & Brother, DR.

			$ cts.
1866.			
Dec.	11.	To 2 mauling spikes, at $1 37½ cents each	2 75
"	"	" parcel of nails	75
"	"	" 2 iron mast-hoops	2 50
"	"	" 1 grinding-stone handle	50
1867.			
Jan.	8.	" 6 stentions braces, at 40 cts. each	2 40
"	11.	" 2 stentions plates & bolts, 277 lbs., at 19 cts. per lb	71 63
"	"	" 4 eye-bolts, at 25 cts. each	1 00
"	"	" 1 lb. of nails	25
"	16.	" 4¾ ring-bolts, with screws, at $1 each	1 00
"	"	" 2 screw-bolts, at 50 cts. each	1 00
"	18.	" repairing 8 screw-bolts, at 20 cts. each	1 60
5 "	"	" 1 socket wrench	2 50
"	"	" 1 day's labor on board	4 00
			$94 88

BALTIMORE, *March* 11, 1867.

Steamer Lulu to John Mills, DR.

1866.			
October	24.	To 7 days' joiner, at 3 75	26 25
		450 feet plant, " 7 cts. foot	31 50
		3 locks, 50 cts	1 50
		1 pair strap hinges	75
		10 lbs. cut nails, 10 cts	1 00
		4 lbs. rot. nails, 15 cts	60
		2 doz. screws, 14	28
November	13.	2 days' joiner	7 50
		4 brass hooks, 35	1 40
		2 brass buttons, 35	70
		6 brass screws, 3	18
Dec'r	14.	2 days' joiner	7 50
		40 feet plank	2 80
		4 lbs. nails	40
1867.			
Jan'y	19.	3½ days' joiner	13 12
		112 feet plank	7 84
		9 lbs. nails	90
		2 hooks, 30	60
		1 pair strap hinges	75
		1 pair table hinges	25
6		1 hasp	15
		1 feet wallnut, 16 per foot	1 92
		2 doz. screws	25
		1 lb. rot. nails	20
			$108 34

BALTO., *Mar.* 1, 1867.

Steamer Lulu & owners, D. F. Keeling, agent, to Skinner & Forsyth, DR.

1867.			
Jan'y	3.	2½ days' carpenter, 3 50; 20 ft. timber, 5; 12 ft. plank, 7	10 50
		2 days' caulking, 3 50; 15 lbs. okum, 16; 5 gal. pitch, 75	13 15
	4.	6½ days' carpenter, 3 50; 130 ft. timber, 5	29 25
		135 ft. plank, 7; 13 lbs. bolts, 10; 10 lbs. gal. spikes, 20	12 75
		2½ days' caulking, 3 50; 8 gal. pitch, 15; 10 lb. okum, 16	16 35
	5.	1 day's caulking, 3 50; 5½ days' carpenter, 3 50	22 75
		107 feet timber, 5; 15 ft. plank, 7; 10 wedges, 20.	8 40
	7.	6½ days' carpenter, 3 50; 422 feet timber, 5	43 85
	8.	6½ days' carpenter, 3 50; 36 spikes, 15	28 15
		350 feet timber, 5; 14 lb. bolts, 10	18 90
	9.	6½ days' carpenter, 3 50	22 75
	10.	6½ days' carpenter, 3 50; 865 feet plank, 7	83 30
	11.	6½ days' carpenter, 3 50; 20 lb. spikes, 10	25 75
	12.	6½ days' carpenter, 3 50; 180 feet plank, 7	35 35
		58 lb. spikes, 15; 20 lb. bolts, 10; 500 plugs for deck, 2 50	13 20

	14. 6½ days' carpenter, 3 50; 155 ft. plank, 7; 2 lb. spikes, 15	33 90
	15. 6½ days' carpenter, 3 50; 133 feet plank, 7	32 06
	16. 6½ days' carpenter, 3 50; 166 feet plank, 7	34 36
7	10 lb. nails, 20; 1 day's caulking, 3 50; 20 lbs. okum, 16	8 70
	17. 6½ days' carpenter, 3 50; 175 feet plank, 7	35 00
	18. 6½ days' carpenter, 3 50; 50 feet plank, 7	26 25
	2 days' caulking, 3 50; 20 lbs. okum, 16; 10 gal. pitch, 75	17 70
	19. 6½ days' carpenter, 3 50; 115 feet plank, 7	30 80
	28. 3½ days' carpenter, 3 50	12 25
	29. 3½ days' carpenter, 3 50; 1 augur, 1 00	13 25
	30. Brass castings	2 78
	3 days' carpenter, 3 50; 30 lbs. gal. spikes, 20	15 50
	15 lbs. spikes, 15; 15 feet plank, 7	3 50
	31. 3 days' carpenter, 3 50; 20 lb. bolts, 10	12 50
	10 lb. spikes, 15; 18 feet plank, 7	2 76
February	1. 3½ days' carpenter, 3 50; 45 feet plank, 7	15 40
	4. 1 day's caulking, 3 50; 2 gal. pitch, 75	5 00
		$704 92

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

[SEAL.] We command you that you attach, seize, take, and safely keep steamer Lulu, her machinery, tackle, sails, boats, apparel, & furniture, to answer the libel of James A. Skinner and William H. Forsyth in a cause of contract, civil and maritime; and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said dis-
8 trict court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 11 day of March, 1867.

JAS. W. CHEW, *Clk Dist. C't.*

Marshal's return.

Atta'd March 11, 1867. Advertised.

W. BONIFANT, *U. S. Marshal.*

Advertisement.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Whereas on the 11th day of March, 1867, Skinner & Forsythe filed their libel in the United States district court for the district of Maryland against the steamship "Lulu," her boats, tackle, apparel, and furniture, in a cause of contract, civil and maritime; and whereas, by virtue of process, in due form of law, to me directed, returnable on the first Tuesday in June next, I have seized the said steamer "Lulu," and have the

same in my custody: Notice is hereby given that a district court will be held at the United States court-room in the city of Baltimore, on the first Tuesday in June next, for the trial of the said premise, and the owner or owners, and all persons who may have or claim any interest, are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why final decree should not pass as prayed.

W. BONIFANT,
9 *United States Marshal.*

Claim and answer.

In admiralty.—In the district court of the United States for the Maryland district.

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

The claim and answer of the New York Guaranty & Indemnity Company, a corporation incorporated by the laws of the State of New York, intervening for their interest in the American steam-vessel "Lulu," a vessel belonging to the port of New York, in the State of New York, to the libel of James A. Skinner & William H. Forsythe, allege as follows:

First. That they are the owners of the steamer "Lulu," as appears by the bill of sale of said vessel duly recorded in the custom-house of New York; and that she was duly transferred and conveyed to the said defendant by a bill of sale, dated 24th August, 1866, made by her then owners, Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as appears by said bill of sale duly recorded in the custom-house of the port of New York.

Second. That said steamship was engaged in the carriage of passengers and freight between the ports of Baltimore, in the State of Maryland, and Charleston, in the State of South Carolina, during the period between the first day of October, 1866, and the day of the filing of the libel in this cause.

Third. That the defendant does not know, and therefore does not
10 admit, that the repairs and materials alleged to have been made upon and furnished to the said steam-vessel, the "Lulu," were made and furnished as charged; nor that, if made and furnished, that the prices charged therefor are reasonable, usual, or proper; but the defendant does aver and charge that they were made, if made, without the knowledge or authority of this defendant, and they do not constitute a lien on said vessel.

Fourth. That while the defendant is the true and lawful owner of said vessel, by a good and lawful transfer to them by the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham as aforesaid, yet they admit that the said sale, although absolute in its terms, was subject to an agreement that, on the repayment to the defendant of the sum of twelve thousand dollars, with interest, at the rate of seven per centum per annum, within six months from the date of said bill of sale, together with all commissions and charges properly due, that this defendant would retransfer to the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham the said steamer, the "Lulu."

Fifth. That more than six months have elapsed since the date of said bill of sale, but the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham have, and each of them hath, failed to pay to the defendant the said sum of twelve thousand dollars so advanced as aforesaid, or any part thereof, or any interest due thereon, or any commissions properly chargeable against said vessel and her former owners.

Sixth. That if the claim of the libellants be just and constitutes a lien on said steam-vessel, which the defendant does not admit, but denies, the same ought to be deferred to the claims, rights, and title of the
11 defendant in and to said steam-vessel, the "Lulu."

Seventh. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

WILLIAM MEADE ADDISON,
Proctor for Respondent.

SOUTHERN DISTRICT OF NEW YORK,
State and County of New York, ss:

On this 23d day of March, one thousand eight hundred and sixty-seven, personally came before me, Joshua J. Henry, who, being by me duly sworn, deposes and says that he resides in the said county of New York, and that he is the president of the New York Guaranty & Indemnity Company, respondents above named, and that the foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSHUA J. HENRY.

Sworn to before me this 23d day of March, 1867.

[SEAL.] JAMES BETTS METCALF,
U. S. Commissioner South. Dist. of N. Y.

Petition of New York Guarantee & Indemnity Company for sale of ship.

12 In admiralty.—In the district court of the United States for the Maryland district.

JAMES A. SKINNER, WILLIAM H. FORSYTH,
vs.
STEAMSHIP "LULU."

To the Honorable William F. Giles, judge of the district court of the United States aforesaid:

The petition of the New York Guarantee & Indemnity Company, claimants, intervening in the above-entitled cause, respectfully shows—

First. That the libel in this cause was filed in this court on the 11th day of March, 1867, and that the said steamship was shortly thereafter arrested by the United States marshal, under process issued from this court thereon; and that the said steamship hath been ever since, & now is, in the custody of the said United States marshal by virtue thereof.

Second. That since the institution of said suit from other libels have been filed in this court against the said steamer "Lulu," some of them for repairs & supplies, and others for seamen's wages, all of which are claimed to be maritime liens on said vessel.

Third. That your petitioners hath been informed, & so charges, that numerous other suits are about to be brought against said steamship in this honorable court, many of them for petty amounts.

Fourth. That more than two months will elapse before the June term of this honorable court, to which the process in the suits already brought are returnable.

Fifth. That the interest of all parties require that the vessel should be sold & the proceeds of sale brought into this court to await the
13 final decision of the several cases, as well to avoid the ruinous costs that are daily accruing, as the risks incident to a vessel of her character while lying in port, and to escape also the rapid deterioration to which she is exposed when her welfare is not constantly guarded by experienced officers & men.

Wherefore your petitioner prays that your honor will pass an order for the sale of said vessel, and that the proceeds of sale be immediately brought into this court, to await the final determination of the court in the premises.

WM. MEADE ADDISON,
Proctor for Claimants, the New York Guarantee & Indemnity Company.

Sworn and subscribed to before me this 25th of March, 1867, by Wm. Meade Addison.

WILLIAM F. GILES.

Order.

Ordered by the court, this 25th of March, 1867, that the steamboat mentioned in the above petition be sold by the marshal for cash, on ten days' notice in two of the daily newspapers published in this city, and that he pay the proceeds into the registry of this court to await its further order.

WILLIAM F. GILES.

Marshal's account sales.

Marshal's acc't sales of the steamer "Lulu," sold April 5th, 1867, by order of the United States district court, passed March 25th, 1867, for		$10,250 00
14 Charges:		
Advertising	$27 26	
Auctioneer & labour	30 00	
Towage	15 00	
Watching, 26 days	65 00	
Serving 11 libels	44 00	
Hospital dues	25 00	
Labour, hoisting anker	2 40	
Com's	134 27	
		343 08
Net proceeds		9,906 97

WASHINGTON BONIFANT,
U. S. Marshal.

EMILY HOLMES & BYRON H. HOLMES
vs.
STEAMSHIP "LULU."
} Libel.—Filed 20th March, 1867.

[50-cents U. S. int. rev. stamp.]

In admiralty.

To the Honorable William Fell Giles, judge of the district court of the United States for the district of Maryland:

Emily Holmes (widow), and Byron H. Holmes, of the city of Baltimore, and State of Maryland, and ship-chandlers thereat in copartnership,

under the name and firm of "R. S. Holmes & Sons," exhibit this their libel against the steamship "Lulu"—(whereof one Samuel Childs is, or lately was, master, and David F. Keeling is, or was, agent), now
15 lying at the port of Baltimore, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court—her engines, boilers, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil & maritime. And thereupon the said Emily Holmes and Byron H. Holmes, copartners as aforesaid, do allege and articulately propound as follows, to wit:

First. That the said steamship "Lulu" was, at the time when the supplies hereinafter mentioned were furnished, a foreign vessel, owned by some person or persons not residing in the State of Maryland, and who are to these libellants unknown, and is of the burthen of about —— tons.

Second. That between the twenty-third day of October, eighteen hundred and sixty-six, and the nineteenth day of February, eighteen hundred and sixty-seven, inclusive, on various days between said dates, which are particularly specified in the schedule or account hereto annexed, and filed as part of this libel, marked "Exhibit A," the said steamship "Lulu," then lying at the port of Baltimore, in the [port of Baltimore, in the State of Maryland, and within the flux and reflux of the sea, the said master and agent of said steamship "Lulu" represented to the libellants that the said steamship stood in need of the supplies thereinafter mentioned, in order to render her seaworthy and competent to proceed to sea on her intended voyages, and requested the libellants to furnish such supplies; and that the libellants, in pursuance of such representations and requests, on the days named in said schedule or account, and at Baltimore City aforesaid, undertook to furnish supplies for,
16 and did supply, the said steamship with various articles, such as oil, lard, tallow, soap, gum, soap, brushes, lead, benzine, wick, scoops, cans, lamps, nails, tacks, kettles, hammers, &c., &c., the extent and character of which supplies, and the value thereof are truly and more particularly stated and described in the aforegoing schedule or account thereof hereto annexed, marked "Exhibit A," and which amount in the whole to ($624\frac{27}{100}$) six hundred and twenty-four dollars and twenty-seven cents.

Third. That the said supplies were furnished by the libellants on the credit of the said steamship, as well as of the owners thereof; and were suitable, proper, and necessary for the purpose of enabling the said steamship to sea with safety.

Fourth. That the aforesaid sum of six hundred and twenty-four $\frac{27}{100}$ dollars still remains wholly unpaid and due to the libellants, although they have often requested both the master and agent of said steamship to pay the same.

Fifth. That all and singular the premises are true.

Wherefore your libellants pray that process in due form of law (of arrest and monition) may issue against the said steamship "Lulu," her engines, boilers, boats, tackle, apparel, and furniture; and that this honorable court will pronounce for their aforesaid claim or demand, and decree the same to be paid with costs, and for the payment thereof will condemn said steamship, her engines, boilers, boats, tackle, apparel, and furniture to be sold, and for such other and further relief and redress as to right and justice may appertain, and as this court is competent to give in the premises:

R. S. HOLMES & SONS.

17 JOHN CARSON,
Proctor for Libellants.

Account "Exhibit A."

BALTIMORE, ———, 186—.

M. Lulu and owners, bought of R. S. Holmes & Sons, No. 72 West Pratt street:

1866.			
Oct'r	23.	41 galls. lard oil, 1 70	$69 70
	"	50 lbs. tallow, 16	8 00
	"	20 lbs. cot. waste, 33	6 60
	"	15 " oil soap, 20	3 00
	"	5 galls. lamp oil, 1 65	8 25
	"	2 paint brushes, 75	1 50
	"	2 scrub " 50	1 00
	"	½ bus. lime	60
	"	2 galls. boiled oil, 2 00	4 00
	"	25 lb. wh. lead	4 25
	"	3 galls. benzine, 65	1 95
	"	1 doz. lamp wick, 35	35
	"	6 bars Babbit soap, 20	1 20
	"	2 scoops, 1 75	3 50
	"	2 gum sq. cans, 75	1 50
	"	2 tin " " 50	1 00
	"	1 qr. emery cloth	2 50
	"	1 15-in. Coe's wrench	3 00
	"	9½ lbs. mix. gum, 75	7 13
	"	60½ " pure gum valves, cut to order, 1 40	84 70
	"	2 " lamp wick, 1 25	2 50
18 Nov'r	13.	20 lbs. cot. waste, 33	6 60
	"	2 " lamp wick, 1 25	2 50
Nov'r	13.	1 glove lantern	5 00
	"	1 " " repaired	1 10
	"	24½ lbs. mix. gum, 75	18 38
	"	10½ " round " 1 25	13 13
	"	12½ " pure gum valves, cut to order, 1 40	17 50
	"	1 oil feeder	60
	"	1 qr. emery cloth	2 50
	"	6 Scotch guage glasses, 1 50	9 00
	"	6 bars Babbit soap, 20	1 20
	"	1 w. w. brush	1 50
	"	5 galls. lamp oil, 1 65	8 25
	"	2 brooms, 55	1 10
	"	1 lb. copper wire	1 00
	"	Drayage on scales	50
	26.	50 lb. tallow, 15	7 50
	"	25 " cot. waste, 33	8 25
	"	2 scoops, 1 75	3 50
	"	2 baskets, 75	1 50
	"	4 sq. cans, 2 tin, 1 20, 2 gum, 1 50	2 70
	"	6 bars Babbitt soap, 20	1 20
	"	5 galls. lamp oil, 1 65	8 25
	"	5¼ lbs. r'd gum, 1 25	6 27
	"	6½ " " " "	8 13
	"	1¼ " lamp wick, 1 25	1 57
	"	1 tallow kettle	1 25
	"	6 sledge handles, 30	1 80

	" 1 pa. 16 oz. galv'd tacks		35
19	" 16½ ft. chain, 12½		2 07
Dec'r	8. 50 lbs. tallow, 15		7 50
Dec'r	8. 25 " cot. waste, 33		8 25
	" 1 gal. benzine		65
	" 2 bath-brick		20
	" 5 gall. lamp oil, 1 65		8 25
	" 6 slate pencils		10
	" 6 galv'd iron lamps, 75		4 50
	" 1 chipping hammer		2 75
	" 6 hammer handles		1 50
	" 1 paint brush		1 50
	" 2 brass hooks & staples		65
	" 10½ lbs. manilla rope, 25		2 62
	" 1 h'k'y broom		45
	" 1 oil can		75
	" 1¼ lb. lamp wick, 1 25		1 56
	" 6½ " round gum, 1 25		8 13
	" 8 bars Babbit soap, 20		1 60
	" 1 pa. galv'd tacks		40
	" repairing dead lights		4 00
	" 3 axe-helves		90
	" ¼ lb. copper nails		15
	" repairing tea-pot		50
	" " binnacle lamp		1 25
	" 3¼ lbs. round gum, 1 25		4 70
1867.			
Feb'y	4. 43½ galls. steamboat oil, 1 25		54 38
	" 8 galls. signal " 1 65		13 20
	" 25 lbs. white lead, 16		4 00
	" 10 lbs. red " 20		2 00
20	" 10 lbs. soap, 18		1 80
	" 25 " cot. waste, 33		8 25
	" 25 " Rus. packing, 35		8 75
	" ½ gal. benzine		35
	" 1 ratchett		12 50
	" 2 lamps, 60		1 20
	" 1 log-book		4 50
	" Repairing coffee-pot & lantern		90
	" 15 lbs. galv'd nails, 20		3 00
	" 1 dust-pan		50
	" 1 " brush		50
Feb'y	19. 44½ galls. steamboat oil, 1 30		57 85
	" 8 " lamp " 1 50		12 00
	" 25 lb. tallow, 15		3 75
	" 1 globe lantern		1 60
	" 3 corn brooms, 50		1 50
	" 2 cedar buckets, 70		1 40
	" 3 lbs. copper wire, 85		2 55
	" 2 qrs. em. paper, 60		1 20
	" 1 lamp, 1 lantern, repaired		1 25
			624 27

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting.

[SEAL.] We command you that you attach, seize, take, and safely keep the steamship "Lulu," her engines, boilers, boats, tackle, apparel, and furniture, to answer the libel of Emily Holmes
21 (widow) & Byron H. Holmes, in copartnership, under the name of R. S. Holmes & Sons, in a cause of contract, civil and maritime; and how you shall execute this precept you make known to us in our district court aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you there this writ. Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-six.

Issued 20th day of March, 1867.

JAMES W. CHEW, *Clk Dist. Ct.*

Marshal's return.

Atta'd March 20, '67. Advertised.

W. BONIFANT, *U. S. Marshal.*

Answer.

In admiralty.—In the district court of the United States for the Maryland district.

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

The claim and answer of the New York Guarantee & Indemnity Company, a corporation incorporated by the laws of the State of New York, intervening for their interest in the American steam-vessel, the "Lulu," a vessel belonging to the port of New York, in the State of New York, to the libel of Emily Holmes, and Byron H. Holmes, trading as B.
22 S. Holmes, allege as follows:

First. That they are the owners of the steamer "Lulu," as appears by the bill of sale of said vessel duly recorded in the custom-house of New York; and that she was duly transferred and conveyed to the said defendant by a bill of sale, dated 24th August, 1866, made by her then owners, Charles A. Whitney, Samuel P. Griffin, and William R. Wickham, as appears by said bill of sale duly recorded in the custom-house of the port of New York.

Second. That said steam-vessel was engaged in carriage of passengers and freight between the port of Baltimore, in the State of Maryland, and Charleston, in the State of South Carolina, during the period between the first day of October, 1866, & the day of the filing of the libel in this cause.

Third. That the defendant does not know, and therefore does not admit, that the repairs & materials alleged to have been made upon & furnished to the said steam-vessel, the "Lulu," were made & furnished as charged, nor that, if made & furnished, that the prices charged therefor are reasonable, usual, or proper; but the defendant does aver and charge that they were, if made, without the knowledge or authority of this defendant, and that they do not constitute a lien on said vessel.

Fourth. That while the defendant is the true and lawful owner of said vessel, by a good and lawful transfer to them by the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as aforesaid, yet they admit that the said sale, although absolute in its terms, was
23 subject to an agreement that, on the repayment to the defendant of the sum of twelve thousand dollars, with interest, at the rate of seven per centum per annum, within six months from the date of said bill of sale, together with all commissions and charges properly due, that the defendant would retransfer to the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, the said steamer, the "Lulu."

Fifth. That more than six months have elapsed since the date of said bill of sale, but the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham have, and each of them hath, failed to pay to the defendant the said sum of twelve thousand dollars so advanced as aforesaid, or any part thereof, or any interest due thereon, or any commissions properly chargeable against said vessel and her former owners.

Sixth. That if the claim of the libellants be just, and constitutes a lien on said steam-vessel, which the defendant does not admit but denies, the same ought to be deferred to the claims, rights, and title of the defendant in and to steam-vessel, the "Lulu."

Seventh. That all & singular the premises are true.

Wherefore the respondent prays this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law & justice to administer in the premises.

WM. MEADE ADDISON,
Proctor for Respondent.

SOUTHERN DISTRICT OF NEW YORK,
State and County of New York, ss:

24 On the 23d day of March, one thousand eight hundred and sixty-seven, personally came before me, Joshua J. Henry, who, being by me duly sworn, deposes and says that he resides in the said county of New York, and that he is the president of the New York Guaranty & Indemnity Company, respondents above named, and that the foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSHUA J. HENRY.

Sworn to before me this 23rd day of March, 1867.

[SEAL.] JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of New York.

Exceptions to claim & answer.

In the district court of the United States for the district of Maryland.

HOLMES & HOLMES
vs.
LULU.

The libellants in this cause say that the claim of the New York Guaranty & Indemnity Company is not made in accordance with the rules of this court & of the Supreme Court of the United States, and that the answer of said company ought not, therefore, to be considered by this court, and they file this their exception to said claim and

answer, as not being in conformity as aforesaid, and especially not conforming to the 26th admiralty rule of the Supreme Court of the United States.

25 JOHN CARSON,
Proctor for Libellants.

Consolidated with the case of Skinner & Forsyth against the steamer "Lulu."

SAMUEL R. WAITE } Libel filed 23rd March, 1867.
vs.
STEAMER "LULU." }

Libel.—In admiralty.

To the Honorable William Fell Giles, judge of the district court of the United States for the district of Maryland:

Samuel R. Waite, ship-smith and ship-chandler, of the city of Baltimore, in the State of Maryland, exhibits this his libel against the steamer Lulu—whereof one —— Childs lately was master, now lying at the port of Baltimore, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court—her machinery, tackle, apparel, boats, furniture, and other appurtenances, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime. And thereupon the said Sam'l R. Waite doth allege and articulately propound as follows, to wit:

First. That the said steamer Lulu was at the time when the repairs hereinafter mentioned were made, a foreign vessel, owned by some person or persons not residing in the State of Maryland, and who are to the libellant unknown, and is of the burthen of about five hundred

26 tons.

Second. That at various times during the month of January and February, eighteen hundred and sixty-seven, the said steamer, then lying at the port of Baltimore, in the State aforesaid, and within the flux and reflux of the sea, the said —— Childs, master of the said steamer Lulu, represented to the libellant that the said steamer stood in need of the repairs hereinafter mentioned in order to render her seaworthy and competent to proceed to sea on her intended voyages, and requested the libellant to make such repairs, and that the libellant, in pursuance of such request and representation, at the times and places above mentioned, undertook to repair, and did repair, the said steamer, by furnishing the materials and performing the work and labor mentioned and set forth in the annexed schedule or account; which repairs and the value thereof are truly and more particularly stated and described in the said schedules or account, and which amount in the whole to thirty-five dollars and twenty-six cents.

Third. That the said repairs were so made by the libellant on the credit of said steamer, as well as of the owners, and the said master thereof; and were suitable, proper, and necessary for the purpose of enabling the said steamer to proceed to sea with safety.

Fourth. That the aforesaid sum of thirty-five dollars and twenty-six cents still remains wholly unpaid and due to the libellant, although the libellant has often requested the said master of said steamer to pay the same.

Fifth. That all and singular the premises are true.

Wherefore the libellant prays that process in due form of law

27 may issue against the said steamer Lulu, her boats, tackle, machinery, apparel, furniture, and other appurtenances; and that this honorable court will pronounce for his aforesaid demand, and decree the same to be paid with costs; and for such other and further relief and redress as to right and justice may appertain, and as the court is competent to give in the premises.

JOHN M. FRAZIER,
Proctor for Libellant.

Account.

BALTIMORE, ———, 186–.

Strm. Lulu, dr., to Samuel R. Waite, ship-smith & ship-chandler, and manufacturer of nuts and washers, S. W. cor. Hughes and Covington streets.

1867.

Jan'y 31st.	To 92 lbs. stem iron boiler plate, 18	16 56
	" 40 nails, ⅜, 5	2 00
	" 1 day's forge, bend'g & flanging stem iron	8 00
	" 2 days' work put'g in iron, $3 75	7 50
	" Ferryage, 75; weld'g 3 nails, 15,	90
Feb'y 1.	" 1 cover for strainer	·30
		$35 26

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

28 We command you that you attach, seize, take, and safely keep steamship Lulu, her boats, tackle, apparel, & furniture, [SEAL.] to answer the libel of Samuel R. Waite, in a cause of contract, civil and maritime; and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ. Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 23d day of March, 1867.

JAS. W. CHEW,
Clk Dist. Ct.

Marshal's return.

Atta'd March 23rd, '67. Advertised.
W. BONIFANT, *U. S. Marshal.*

Claim and answer.

In admiralty.—In the district court of the United States for the Maryland district.

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

The claim and answer of the New York Guaranty and Indemnity Company, a corporation incorporated by the laws of the State of New

York, intervening for their interest in the American steam-vessel
29 "Lulu," a vessel belonging to the port of New York, in the State of New York, to the libel of Samuel R. Waite, alleges as follows:

First. That they are the owners of the steamer "Lulu," as appears by a bill of sale of said vessel duly recorded in the custom-house of New York, and that she was duly transferred and conveyed to the said defendant by a bill of sale, dated 24th August, 1866, made by her then owners, Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as appears by said bill of sale duly recorded in the custom-house of the port of New York.

Second. That it is true, as stated in the said libel, that the steamship "Lulu," during the months of January and February, 1867, was in the port of Baltimore; but that this respondent hath no knowledge that the repairs and materials were furnished as in the libel charged.

Third. That the respondent hath no knowledge of any of the other matters or things alleged in said libel.

Fourth. That the said vessel, at the time when said repairs and materials are alleged to have been made and supplied, was engaged, and for a long time before was engaged, in the regular trade of carrying passengers and freight between the said ports of Baltimore & the port of Charleston, in South Carolina, and regularly plying between them.

Fifth. That while the defendant is the true and lawful owner of the said vessel, by a good and lawful transfer to them by the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as aforesaid, yet they admit that the said sale, though absolute in its terms, was sub-
ject to an agreement that, on the repayment by the defendant of
30 the sum of twelve thousand dollars, with interest at the rate of seven per centum per annum, within six month from the date of said bill of sale, together with all commissions and charges properly due, that this defendant would retransfer to the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, the said steamer, the "Lulu."

Sixth. That more than six months have elapsed since the date of said bill of sale, but the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham have, and each of them hath, failed to pay to the defendant the said sum of twelve thousand dollars so advanced as aforesaid, or any part thereof, or any interest due thereon, or any commissions properly chargeable against said vessel and her former owners.

Seventh. That if the claim of the libellants be just, and constitutes a lien on said steam-vessel, which the defendant does not admit, but denies, the same ought to be deferred to the claims, rights, and title of the defendant in and to said steam-vessel, the Lulu.

Eighth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

SOUTHERN DISTRICT OF NEW YORK,
State and County of New York, ss:

On the 28th day of March, one thousand eight hundred and
31 sixty-seven, personally came before me Joshua J. Henry, who, being by me duly sworn, deposes and says that he resides in the said county of New York, and that he is the president of the New York Guaranty and Indemnity Company, respondents above named, and that

the foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSHUA J. HENRY.

Sworn to before me this 28th day of March, 1867.

[SEAL.] JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of New York.

Consolidated with the case of Skinner and Forsyth against steamer Lulu.

HENRY KIMBERLY *vs.* STEAMSHIP "LULU." } Libel filed 25th March, 1867.

Libel.—In admiralty.

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

Henry Kimberly, provision dealer and merchant, of Baltimore City, in the district aforesaid, exhibits this his libel against the steamship "Lulu"—whereof Daniel C. Childs is, or lately was, master, now
32 lying at the port of Baltimore—in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime.

And thereupon the said Henry Kimberly doth allege and articulately propound—

First. That the said steamship "Lulu" was, at the time when the supplies hereinafter mentioned were furnished, a foreign steamer, owned by some person or persons not residing in the State of Maryland, and who are to the libellant unknown, and is of a burthen of about ——— tons.

Second. That at various times from the 27th day of September, 1866, to the 11th March, 1867, both inclusive, the said steamer then lying at the port of Baltimore aforesaid, the libellant, at the request of the master of the said steamer, and on his representation that the same were necessary and proper supplies for said steamer on her voyages to and from the said port of Baltimore, did furnish supplies to the said steamer, which supplies consisted of meat, vegetables, &c., and all of which, and the value thereof, are truly and more particularly stated and described in the schedules hereto annexed, and which amount in the whole to the sum of five hundred and fifty-eight & $\frac{38}{100}$ dollars ($558 38).

Third. That the said supplies and all of them were so made and furnished on the credit of the said steamship and of her owners; and were suitable, proper, and necessary for the voyages made and being made by the said steamer.

Fourth. That the aforesaid sum of $558 38, five hundred and fifty-eight and $\frac{38}{100}$ dollars, still remains wholly unpaid and due to the
33 libellant, although payment thereof hath been often demanded of the same.

Fifth. That all and singular the premises are true.

Wherefore the libellant prays that process in due form of law may issue against the said steamship "Lulu," her boats, apparel, and furniture, and that this honorable court will pronounce for his aforesaid demand, and

decree the same to be paid with costs; and for such other and further relief and redress as to right and justice may appertain, and as the court is competent to give in the premises.

BERNARD CARTER, *Proctor for Libellant.*

Schedules.

BALTIMORE, *December 3rd*, 1866.

Steamer Lulu & owners bought of Henry Kimberly—

1866.			
Sept'r	27.	To 2 tons of ice, 8	$16 00
October	26.	" 2 do. " 8	16 00
November	5.	" 1,900 lbs. ice, 40 c	7 60
			$39 60

Approved: DANIEL CHILDS.

BALTIMORE, *December 3d*, 1866.

Steamer Lulu & owners bought of H. Kimberly—

	Nove'r 27.	To 21 lb. beef, 16 c	3 36
34	" "	" 1 ton of ice	8 00
	" 28.	" 470 lb. beef and small meat, 16 c	75 20
	" "	" 4 doz. eggs, 45 c	1 80
	" "	" vegetables	5 50
			$93 86
			4 69
			89 17

BALTIMORE, *December* 13, 1866.

Steamer Lulu & owners bought of H. Kimberly—

Dece'r	8.	To 27 lb. beef, *a* 14 c	3 78
"	11.	" 10 lb. do. 14 c	1 40
"	12.	" 33 lb. do. 14 c	4 62
"	"	" vegetables	1 00
"	13.	" 449 lb. beef & small meats, 14 c	62 86
"	"	" vegetables	5 41
			$79 07

Approved: DANIEL C. CHILDS.

BALTIMORE, *January 17th*, 1867.

Stmr. Lulu & owners bought of H. Kimberly—

1866.			
December	13.	To 1,800 lb. ice	14 40
"	26.	" 67 lb. beef, 14 c	9 38
"	"	" eggs, apples, & vegetables	1 19
"	29.	" 28 lb. beef, 14 c	3 92
"	"	" vegetables 43, & eggs 45 c	88
"	31.	" 36 lb. beef, 14 c	5 04
	Jan'y 2, '67.	" vegetables	66
35	"	" 30 lb. beef, 14 c	4 20
	5,	" 41 lb. do. 14 c	5 74
"	"	" vegetables and eggs	1 00
"	"	" 6 lb. mutton, 14 c	84

"	"	"	meat & vegetables	90
"	8.	"	5 lb. beef, 14 c	70
"	9.	"	45 lb. meat, 14 c	6 30
"	"	"	vegetables	58
"	14.	"	40 lb. beef, 14 c	5 60
"	"	"	vegetables	2 00
				$63 33

Approved: DANIEL C. CHILDS.

BALTIMORE, *February 7th*, 1867.

Steamer Lulu & owners bought of H. Kimberly—

1867.				
January	17.	To	vegetables	2 12
"	"	"	30 lb. beef, 14 c	4 20
"	19.	"	vegetables	50
"	21.	"	54 lb. beef, 14 c	7 56
"	23.	"	vegetables	1 45
"	26.	"	37 lb. beef, 14 c., 5 18; vegetables, 1 87	7 05
"	30.	"	59 lb. beef & small meats, 14 c	8 26
February	2.	"	35 lb ....do....do...14 c	4 90
	10.	"	24 lb ....do....do...14 c	3 36
	"	"	1¼ l. butter	80
	7.	"	548 lb. beef, 14 c	76 72
	"	"	2,000 lb. ice	8 00
				$124 92

36

BALTIMORE, *March 12th*, 1867.

Steamer Lulu & owners bought of H. Kimberly—

Feb'y	7.	To	vegetables	8 66
"	19.	"	13 lb. beef, 14 c	1 82
"	20.	"	15 lb..do 14 c	2 10
"	"	"	vegetables	2 18
"	21.	"	481 lb. beef, 14 c	67 34
"	"	"	vegetables	6 90
				$89 00

BALTIMORE, *March* 12, 1867.

Steamer Lulu & owners bought of H. Kimberly—

March	8.	To	23 lb. beef, 14 c	3 22
"	9.	"	26 lb..do..14 c	3 64
"	"	"	2 chickens for Capt. C	1 50
"	"	"	5 lb. beef....do.....14 c	70
"	11.	"	29 lb.do.14 c	4 06
				$13 12

Attachment.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To the marshal for the Maryland district, greeting:

[SEAL.] We command you that you attach, seize, take, and safely keep steamship Lulu, her boats, tackle, apparel, and furniture, to answer the libel of Henry Kimberly, in a cause of contract, civil &

maritime; and how you shall execute this precept you make known
37 to us in our district court for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 23d day of March, 1867.

(B. C.) JAS. W. CHEW, *Clk Dist. Ct.*

Marshal's return.

Atta'd March 25th, '67. Advertised.

W. BONIFANT, *U. S. Marshal.*

Claim and answer.

In admiralty.—In the district court of the United States for the Maryland district.

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

The claim and answer of the New York Guaranty and Indemnity Company, a corporation incorporated by the laws of the State of New York, intervening for their interest in the American steam-vessel Lulu, a vessel belonging to the port of New York, in the State of New York, to the libel of Henry Kimberly, alleges as follows:

First. That they are the owners of the steamer "Lulu," as appears by a bill of sale of said vessel duly filed & recorded in the custom-house of New York, and that she was duly transferred and conveyed to the said defendant by a bill of sale dated 24th August, 1866, made by her
38 then owners, Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as appears by said bill of sale duly recorded in the custom-house of the port of New York.

Second. That it is true, as charged in said libel, that the steamer "Lulu" was owned by persons not residing in the State of Maryland.

Third. That it is true that said steamer was engaged from a time prior to 27 of September, 1866, down to the 11th March, 1867, in making voyages out of the port of Baltimore.

Fourth. That this respondent does not know, and, therefore, does not admit, that the account for meat, vegetables, and other supplies, filed with said libel, were furnished by the libellants as charged, or that the prices are fair and just, but the said respondent is informed and advised that the same do not constitute a lien on said steamer.

Fifth. That said steamship was during all that time engaged in the regular trade and business of carrying passengers & freight between the said port of Baltimore and the port of Charleston, in South Carolina, and plying regularly between said ports.

Sixth. That this respondent does not admit that the said supplies, if furnished, were furnished on the credit of said steamer.

Seventh. That while the defendant is the true and lawful owner of said vessel, by a good and lawful transfer to them by the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as aforesaid, yet they admit that the said sale, though absolute in its terms, was subject to an agreement that on the repayment to the defendant of
39 the sum of twelve thousand dollars, with interest, at the rate of seven per centum per annum, within six months from the date of

said bill of sale, together with all commissions and charges properly due, that this defendant would retransfer to the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, the said steamer, the Lulu.

Eighth. That more than six months have elapsed since the date of said bill of sale, but the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, have, and each of them hath, failed to pay to the defendant the said sum of twelve thousand dollars, so advanced as aforesaid, or any part thereof, or any interest due thereon, or any commissions properly chargeable against said vessel and her former owners.

Ninth. That if the claim of the libellants be just, and constitutes a lien on said steam-vessel, which the defendant does not admit, but denies, the same ought to be deferred to the claims, rights, and title of the defendant in and to said steam-vessel, the Lulu.

Tenth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

WM. MEADE ADDISON,
Proctor for Respondent.

SOUTHERN DISTRICT OF NEW YORK,
State and County of New York, ss:

On the 28th day of March, one thousand eight hundred and sixty-seven, personally came before me, Joshua J. Henry, who, being by
40 me duly sworn, deposes and says that he resides in the said county of New York, and that he is the president of the New York Guaranty and Indemnity Company, respondents above named, and that the foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSHUA J. HENRY.

Sworn to before me this day, 28th of March, 1867.
[SEAL.] JAMES BETTS METCALF,
U. S. Commissioner, So. Dist. of New York.

Consolidated with the case of Skinner and Forsyth against the Lulu.

R. G. RIEMAN AND ALFRED POOR *vs.* STEAMER LULU. } Libel filed 25 March, 1867.

Libel.

District court of the United States of America, district of Maryland.—In admiralty.

To the judge of the district court of the United States for the district of Maryland:

Robert G. Rieman and Alfred Poor, copartners, trading under the name and style of Robt. G. Rieman and Company, in the city of Baltimore,
41 dealers in coal, exhibit this their libel agains tthe steamer Lulu—whereof Daniel Childs is or lately was master, now lying at the port of Baltimore, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court—her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime.

And thereupon the said libellants do allege and articulately propound as follows, to wit:

First. That the said steamer Lulu was, at the time when the supplies hereinafter mentioned were furnished, a foreign vessel, owned by some person or persons not residing in the State of Maryland, and who are to the libellants unknown, and is of the burthen of ——— tons.

Second. That on or about the 2nd & 18th days of February, 1867, the said steamer, then lying at the port of Baltimore, in the State of Maryland, and within the admiralty and maritime jurisdiction of the United States, the said ———, master of the said steamer Lulu, represented to the libellants that the said steamer stood in need of the supplies hereinafter mentioned, in order to render her seaworthy and competent to proceed to sea on her intended voyage, and requested the libellants to furnish such supplies; and that the libellants, in pursuance of such representation and request, at the times and at the place last above mentioned, undertook to furnish supplies for, and did supply, the said steamer, by furnishing for the use of the said steamer two hundred tons of hard coal, which supplies and the value thereof, together with charges for delivering said coal, are truly and particularly stated and
42 described in the schedule or account hereunto annexed, and which amount in the whole to fifteen hundred and ninety dollars ($1,590).

Third. That the said supplies were so furnished by the libellants on the credit of the said steamer, and were suitable, proper, and necessary for the purpose of enabling the said steamer to proceed to sea with safety.

Fourth. That the aforesaid sum of fifteen hundred and ninety dollars still remains wholly unpaid and due to the libellants, although the libellants have often requested the payment of the same.

Fifth. That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said steamer Lulu, her boats, tackle, apparel, and furniture; and that this honorable court will pronounce for their aforesaid demand, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and as the court is competent to give in the premises.

——— ———,
Libellants.

C. J. M. GWINN, *Proctor.*

On the 25th day of March, 1867, appeared personally Alfred Poor, one of the above-named libellants, and was sworn to the truth of the foregoing libel.

Before me.

JAS. W. CHEW,
Clerk Dist. C't, & U. S. Commis'r ex officio.

[5-cents U. S. int. rev. stamp.]

Account.

BALTIMORE, ———, 186–.

Steamer Lulu & owners bought of Rob't G. Rieman & Co.—

43 1867.

Feb'y 2d.	100 tons hard coal, *a* 7½	$750 00	
	Trimming, 25$; extra scowage, 2$	55 00	
			805 00
18.	100 tons hard coal, *a* 7½	750 00	
	Trimming	35 00	
			785 00
			$1,590 00

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

[SEAL.] We command you that you attach, seize, take, and safely keep steamship Lulu, her boats, tackle, apparel, and furniture, to answer the libel of Robert G. Rieman and Alfred Poor, in a cause contract, civil and maritime, and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 26 day of March, 1867.

JAS. W. CHEW, *Clk Dist. Ct.*

Marshal's return.

Atta'd March 26, '67. Advertised.

W. BONIFANT, *U. S. Marshal.*

44 *Answer and claim.*

In admiralty.—In the district court of the United States for the Maryland district.

To the Honorable William F. Giles, judge of the district court of the United States for Maryland district:

The claim and answer of the New York Guaranty and Indemnity Company, a corporation incorporated by the laws of the State of New York, intervening for their interest in the American steam-vessel Lulu, a vessel belonging to the port of New York, in the State of New York, to the libel of Robert G. Rieman and Alfred Poor, trading under the name and style of Robert G. Rieman & Company, alleges as follows:

First. That they are the owners of the steamer Lulu, as appears by the bill of sale of said vessel duly recorded in the custom-house of New York, and that she was duly transferred and conveyed to the said defendant by a bill of sale dated 24 August, 1866, made by her then owners, Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as appears by said bill of sale duly recorded in the custom-house of the port of New York.

Second. That it is true as charged in said libel that the steamer Lulu was not owned by persons residing in Maryland, but by persons residing in New York.

Third. That it is true that said steamer was lying in the port of Baltimore, as charged, about the second and eighteenth days of February, 1867, but that they have no knowledge of any representations to the libellants by the master of the Lulu that she needed the supplies charged to have been furnished in order to render her seaworthy & to en-
45 able her to proceed to sea, & do not admit, but denies, that such representation was made, nor have they any knowledge that libellants furnished the supplies mentioned in the libel for the use of said vessel, and do not admit, but denies, the same.

Fourth. That this respondent does not know, &, therefore, does not admit, but denies, that said supplies were furnished on the credit of said vessel, and that the prices are fair and just.

Fifth. That said steamship was during the period between the 2nd and 18th of February, 1867, and for many months prior thereto, engaged in the regular trade and business of carrying passengers & freight between the said port of Baltimore, and the port of Charleston, in South Carolina, and plying regularly between said ports.

Sixth. That while the defendant is the true and lawful owner of said vessel, by a good and lawful transfer to them by the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as aforesaid, yet they admit that the said sale, although absolute in its terms, was subject to an agreement that on repayment to the defendant of the sum of twelve thousand dollars, with interest, at the rate of seven per centum per annum, within six months from the date of said bill of sale, together with all commissions and charges properly due, that this defendant would retransfer to the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham the said steamer, the Lulu.

Seventh. That more than six months have elapsed since the date
46 of said bill of sale, but the said Charles A. Whitney, Samuel P. Griffin, & William H. Wickam, have, and each of them hath, failed to pay to the defendant the said sum of twelve thousand dollars, so advanced as aforesaid, or any part thereof, or any interest due thereon, or any commissions properly chargeable against said vessel and her former owners.

Eighth. That if the claim of the libellants be just, & constitutes a lien on said steamer, which the defendant does not admit, but denies, the same ought to be deferred to the claims, rights, and title of the defendant in and to the said steamer, the Lulu.

Ninth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

SOUTHERN DISTRICT OF NEW YORK,
State & County of New York:

On the 1st day of April, one thousand eight hundred and sixty-seven, personally came before me, Joshua J. Henry, who, being by me duly sworn, deposes and says that he resides in the said county of New York, and that he is the president of the New York Guaranty and Indemnity Company, respondents above named, and that the foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSHUA J. HENRY.

Sworn to before me this 1st day of April, 1867.
47 [SEAL.] JAMES BETTS METCALF,
U. S. Commissioner, So. Dist. of New York.

Petition.

ROBERT G. RIEMAN AND ALFRED POOR
vs.
STEAMER LULU.

In the United States district court, Md. district.

To Hon. Wm. F. Giles, judge of the U. S. district c't for Md. district:

The petition of Robert G. Rieman and Alfred Poor respectfully repre-

sents that on the 25th day of March, 1867, they filed in this hon. court their libel against the said steamer Lulu, her boats, &c., &c., to enforce against said steamer a maritime lien for work and labor, and for sundry supplies and materials, done upon and furnished said steamer, to the amount of fifteen hundred and ninety dollars, with interest; that the said steamer has since been sold by the United States marshal for said district, under an order of this court passed in a suit entitled James A. Skinner and Wm. H. Forsyth vs. steamer Lulu, and the proceeds are now in the registry of this honorable court for distribution.

Wherefore, &c., petitioners pray that their said libel may be consolidated with the said suit of James A. Skinner and Wm. H. Forsyth vs. the said steamer Lulu, and that their said claim may be allowed out of the said proceeds, and they will ever pray, &c.

C. J. M. GWINN,
Proctor for R. G. Rieman & Alfred Poor.

48 *Order.*

Leave granted as prayed in foregoing petition.

WILLIAM F. GILES.

JUNE 3*rd*, 1867.

JOHN J. ABRAHAMS & WM. H. ABRAHAMS *vs.* STEAMER LULU. } Libel filed 26 March, 1867.

Libel.

To the Hon. Wm. F. Giles, judge of the district court of the United States for Maryland district:

John J. Abrahams and William H. Abrahams, copartners, trading under the name and firm of J. J. Abrahams & Son, exhibit this their libel against the steamship Lulu—(whereof ——— is or lately was master), now lying at the port of Baltimore, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court—her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime. And thereupon the said John J. Abrahams and William H. Abrahams do allege and articulately propound as follows, to wit:

First. That the said steamship Lulu was, at the time when the repairs and labor hereinafter mentioned were made and bestowed, a foreign vessel, owned by some person or persons not residing in the State of Maryland, and who are to the libellant unknown, and is of the burthen of about —— tons.

49 Second. That on or about the 1 day of January, 1867, the said ship then lying at the port of Baltimore, in the State of Maryland, and within the flux and reflux of the sea, the said ——— ———, master of the said ship Lulu, represented to the libellants that the said ship stood in need of the services & labor hereinafter mentioned, in order to render her seaworthy & competent to proceed to sea on her intended voyage, and requested the libellants to perform such service & labor; and that the libellants, in pursuance of such representation and request, on the day and at the place last above mentioned, undertook to repair & to perform the services and labor, & did perform the services & labor, on said ship, by hauling her on the screw-dock of the libellants on that day and on several subsequent days, which services and labor and

the value thereof are truly and more particularly stated and described in the schedule or account hereunto annexed, and which amount in the whole to seven hundred and eighty-four $\frac{40}{100}$ dollars (784\frac{40}{100}$).

Third. That the said services & labor were performed & done by the libellants on the credit of the said ship, as well as of the owners & master thereof, and were suitable, proper, and necessary for the purpose of enabling the said ship to proceed to sea with safety.

Fourth. That the aforesaid sum of seven hundred & eighty-four dollars & forty cents still remains wholly unpaid & due to the libellants, although the libellants have often requested the said ———, the aforesaid master of said ship, to pay the same.

Fifth. That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said ship Lulu, her boats, tackle, apparel, & furniture, and that this hon. court will pronounce for his aforesaid demand, & decree the same to be paid, with costs; & for such other & further relief and redress as to right & justice may appertain, & as this court is competent to give in the premises.

ORVILLE HORWITZ,
Proctor for Libellant.

Account.

BALTIMORE, *Jan.* 30, 1867.

Steamship Lulu & own's to J. J. Abrahams & Son, DR.

Jan. 1.	To ½ day	dockage, *a* 25 c.	per ton		74 00
2.	" ½ "	ditto *a* 25 c.	" "		74 00
"	" ½ "	ditto *a* 15 c.	" "		44 40
3.	" one "	ditto *a* 15 c.	" "		88 80
4.	" one "	ditto *a* 15 c.	" "		88 80
5.	" one "	ditto *a* 15 c.	" "		88 80
28.	" one "	ditto *a* 25 c.	" "		148 00
29.	" one "	ditto *a* 15 c.	" "		88 80
30,	" one "	ditto *a* 15 c.	" "		88 80
	592 tons				$784 40

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

[SEAL.] We command you that you attach, seize, take, and safely keep steamship Lulu, her boats, tackle, apparel, & furniture, to answer the libel of John J. Abrahams & Wm. H. Abrahams in a cause of contract, civil and maritime; and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 26 March, 1867.

JAS. W. CHEW, *Clk Dist. Ct.*

Marshal's return.

Atta'd March 26, '67. Advertised.

W. BONIFANT, *U. S. Marshal.*

Claim and answer.

In admiralty.—In the district court of the United States for the Maryland district.

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

The claim and answer of the New York Guaranty and Indemnity Company, a corporation incorporated by the laws of the State of New York, intervening for their interest in the American steam-vessel Lulu, a vessel belonging to the port of New York, in the State of New York, to the libel of John J. Abrahams and William H. Abrahams, trading under the name and firm of J. J. Abrahams & Son, alleges as
52 follows:

First. That they are the owners of the steamer Lulu, as appears by the bill of sale of said vessel in the custom-house of New York, and that she was duly transferred and conveyed to the said defendant by a bill of sale dated 24th August, 1866, made by her then owners, Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as appears by said bill of sale duly recorded in the custom-house of the port of New York.

Second. That it is true, as charged in said libel, that the steamer Lulu, at the time when the repairs are charged to have been made and labor bestowed, was in the port of Baltimore, and that she was not owned by persons residing in Maryland, but by persons residing in New York.

Third. That this respondent does not know, and, therefore, does not admit, that the master of the Lulu represented to the libellants that said steamer required the services and labor alleged to have been rendered to enable her to proceed to sea on her intended voyage, and requested them to render the same; nor do they know that such labor and services were performed, nor, if performed, what was their fair and just value.

Fourth. This respondent does not know, and, therefore, does not admit, but denies that such labor and services were performed on the credit of steamer Lulu, or her now owners, nor were they proper & necessary for the purpose of enabling said ship to proceed to sea with safety, and the said respondent is advised and insists that said labor and
53 services, or the charges for the same, do not constitute a lien on said vessel Lulu, nor a subject-matter of maritime contract over which this court hath jurisdiction.

Fifth. That said steamer was, during the period between the 1st of January, 1867, and the thirtieth of same month, engaged in the regular trade and business of carrying passengers and freight between the said port of Baltimore, and the port of Charleston, in South Carolina, and plying regularly between said ports.

Sixth. That while the defendant is the true and lawful owner of said vessel, by a good and lawful transfer to them by the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as aforesaid, yet they admit that the said sale, although absolute in its terms, was subject to an agreement that on the repayment to the defendant of the sum of twelve thousand dollars, with interest, at the rate of seven per

centum per annum, within six months from the date of said bill of sale, together with all commissions and charges properly due, that this defendant would retransfer to the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, the said steamer, the Lulu.

Seventh. That more than six months have elapsed since the date of said bill of sale. but the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham have, and each of them hath, failed to pay to the defendant the said sum of twelve thousand dollars, so advanced as aforesaid, or any part thereof, or any interest due thereon, or any commissions properly chargeable against said vessel and her former owners.

54 Eighth. That if the claim of the libellants be just, and constitutes a lien on said steamer, which the defendant does not admit, but denies, the same ought to be deferred to the claims, right, & title of the defendant in and to the said steamer, the Lulu.

Ninth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

SOUTHERN DISTRICT OF NEW YORK,
State & County of New York, ss:

On this 1st day of April, one thousand eight hundred and sixty-seven, personally came before me, Joshua J. Henry, who, being by me duly sworn, deposes and says that he resides in the said county of New York, and that he is the president of the New York Guaranty & Indemnity Company, respondents above named, and that the foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSHUA J. HENRY.

Sworn before me this 1st day of April, 1867.

[SEAL.] JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of N. Y.

Petition.

55 JOHN J. ABRAHAMS & WILLIAM H. ABRAHAMS
vs.
STEAMER LULU.

In the United States district court, Md. district.

To Hon. Wm. F. Giles, judge of the U. S. district c't for Md. district:

The petition of John J. Abrahams and Wm. H. Abrahams, respectfully represents that on the 26th day of March, 1867, they filed in this hon. court their libel against the said steamer Lulu, her boats, &c., &c., to enforce against said steamer a maritime lien for work & labor, & for sundry supplies & materials done upon & furnished said steamer to the amount of seven hundred and eighty-four $\frac{40}{100}$ dollars, with interest; that said steamer has since been sold by the United States marshal for said district, under an order of this court passed in a suit entitled James A. Skinner & Wm. H. Forsyth vs. steamer Lulu, and the proceeds are now in the registry of this hon. court for distribution.

Wherefore y'r petitioners pray that their said libel may be consolidated with the said suit of James A Skinner & Wm. H. Forsyth vs. the said steamer Lulu, and that their said claim may be allowed out of said proceeds; and they will ever pray, &c.

ORVILLE HORWITZ,
Proctor for J. J. Abrahams & Son.

Order.

Leave granted as prayed in foregoing petition.

WILLIAM F. GILES.

JUNE 3*rd*, 1867.

JAMES BOYCE *vs.* STEAMER LULU. } Libel filed 26 March, 1867.

56 *Libel.—In admiralty.*

To Hon. Wm. F. Giles, judge of the district court of the United States for the district of Maryland:

James Boyce, of Baltimore City, wholesale dealer in coal, exhibits this his libel against the steamship Lulu—(whereof ——— is or lately was master), now lying at the port of Baltimore, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court—her boats, tackle, apparel, & furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime. And thereupon the said James Boyce doth allege & articulately propound as follows, to wit:

First. That the said ship Lulu was, at the time when the supplies hereinafter mentioned were furnished, a foreign vessel, owned by some person or persons not residing in the State of Maryland, and who are to the libellant unknown, and is of the burthen of about —— tons.

Second. That on or about the 30 day of August, 1866, the said ship then lying at the port of Baltimore, in the State of Maryland, & within the flux and reflux of the sea, the said master of the said ship Lulu represented to the libellant that the said ship stood in need of the supplies hereinafter mentioned in order to render her seaworthy & competent to proceed to sea upon her intended voyage, & requested the libellant to furnish such supplies; and that the libellant, in pursuance of such representation & request, on the day & at the place above
57 mentioned, & on several subsequent days, undertook to furnish supplies for and did supply the said ship, by furnishing for the use of the said ship (235) two hundred and thirty-five tons of anthracite coal, & with the scowage, loading, & wharfage on a part thereof, which supplies and the value thereof are truly & more particularly stated & described in the schedule or account thereof hereunto annexed, & which amount in the whole to nineteen hundred & fifty-four dollars and seventy-five cents, with interest.

Third. That the said supplies were so furnished by the libellant on the credit of the said ship, as well as of the owners, & the said master thereof, & were suitable, proper, & necessary for the purpose of enabling the said ship to proceed to sea with safety.

Fourth. That the aforesaid sum of nineteen hundred & fifty-five dollars & seventy-five cents still remains wholly unpaid & due to the libellant, although the libellant has often requested the said ———, the aforesaid master of the said ship, to pay the same.

Fifth. That all and singular the premises are true.

Wherefore the libellant prays that process in due form of law may issue against the said ship Lulu, her boats, tackle, apparel, & furniture, & that this hon. court will pronounce for his aforesaid demand, & decree the same to be paid with costs, & for such other & further relief & redress as to right & justice may appertain, & as the court is competent to give in the premises.

JAMES BOYCE.

ORVILLE HORWITZ,
Proctor for Libellant.

58 On the 26th day of March, 1867, appeared personally James Boyce, the above-named libellant, & was sworn to the truth of the foregoing libel before me.

JAMES W. CHEW,
Clk Dist. C't, & U. S. Comm'r ex off.

[U. S. 5-cents int. rev. stamp.]

Account.

BALTIMORE, *January*, 1867.

Steamer Lulu & owners to James Boyce, dr., miner and shipper of coal, 30 Second street.

1866.				
August	31.	For 50 c. per ton on 94 tons coal furnished steamer Lulu by Mordecai & Co	$47	
October	23.	75 tons No. 1. W. A. coal (Un. Dx.), $7 50	562 50	
		Loading	26 25	
				588 75
November	26.	80 tons St. Bo. coal, Lo. Pt., 7 50	600 00	
		Scowing and trimming	60 00	
				660 00
December	10.	80 tons St. Bo. coal, Lo. Pt., 7 50	600 00	
		Scowing and trimming	60 00	
				660 00
		Average date Nov. 19, 1866		$1,955 75

Approved:

DANIEL C. CHILDS.

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

59 We command you that you attach, seize, take, and safely keep steamship Lulu, her boats, tackle, apparel, & furniture, to answer the libel of James Boyce in a cause of contract, civil & maritime; and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ. Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.]

Issued 26 day of March, 1867.

JAS. W. CHEW, *Clk Dist. C't.*

Marshal's return.

Atta'd March 26, '67. Advertised.

W. BONIFANT, *U. S. Marshal.*

Claim and answer.

In admiralty.—In the district court of the United States for the Maryland district.

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

The claim and answer of the New York Guaranty and Indemnity Company, a corporation incorporated by the laws of the State of New York, intervening for their interest in the American steam-vessel
60 Lulu, a vessel belonging to the port of New York, to the libel of James Boyce, alleges as follows:

First. That they are the owners of the Lulu (a steamer), as appears by the enrolment of said vessel in the custom-house of New York, and that she was duly transferred and conveyed to the said defendant by a bill of sale dated 24 August, 1866, made by her owners, Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as appears by said bill of sale duly recorded in the custom-house of the port of New York.

Second. That it is true, as charged in said libel, that the steamer Lulu was not owned by persons residing in Maryland, but by persons residing in New York.

Third. That it is true that said steamer was lying in the port of Baltimore on or about the 30 of August, 1866, & on the other days charged in said libel, but that they have no knowledge of any representations to the libellant by the master of the Lulu that she needed the supplies charged to have been furnished in order to render her seaworthy, & to enable her to proceed to sea, & do not admit, but denies, that such representations were made; nor have they any knowledge that libellants furnished the supplies mentioned in the libel for the use of said vessel, and do not admit, but denies the same.

Fourth. That this respondent does not know, and, therefore, does not admit, but denies, that said supplies were furnished on the credit of said vessel, or on that of her now owners, & that the prices are fair and just.

61 Fifth. That said steamship was, during the period between the 30th of August, and the 10th of December, 1866, & many months prior thereto, engaged in the regular trade and business of carrying passengers & freight between the said port of Baltimore and the port of Charleston, in South Carolina, and plying regularly between said ports.

Sixth. That while defendant is the true and lawful owner of said vessel, by a good and lawful transfer to them by the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as aforesaid, yet they admit that the said sale, although absolute in its terms, was subject to an agreement that on the repayment to the defendant of the sum of twelve thousand dollars, with interest at the rate of seven per centum per annum, within six months from the date of said bill of sale, together with all commissions & charges properly due, that the defendant would retransfer to the said Charles A. Whitney, Samuel P. Griffin, & William H. Wickham the said steamer, the Lulu.

Seventh. That more than six months have elapsed since the date of said bill of sale, but the said Charles A. Whitney, Samuel P. Griffin, &

William H. Wickham have, and each of them hath, failed to pay to the defendant the said sum of twelve thousand dollars so advanced as aforesaid, or any part thereof, or any interest due thereon, or any commissions properly chargeable against said vessel & her former owners.

Eighth. That if the claim of the libellants be just, and constitutes a lien on said steamer, which the defendant does not admit, but denies, the same ought to be deferred to the claims, rights, and title of
62 the defendant in and to the said steamer, the Lulu.

Ninth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

SOUTHERN DISTRICT OF NEW YORK,
State & County of New York, ss:

On the 1st day of April, one thousand eight hundred and sixty-seven, personally came before me Joshua J. Henry, who, being by me duly sworn, deposes and says that he resides in the said county of New York, and that he is the president of the New York Guaranty and Indemnity Company, respondent above named, and that the foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSHUA J. HENRY.

Sworn to before me this 1st day of April, 1867.
[SEAL.] JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of N. Y.

Petition.

JAMES BOYCE
vs.
STEAMER "LULU."

In the United States district court, Md. district.

To Hon. Wm. Fell Giles, judge U. S. district court for Md. district:

63 The petition of James Boyce respectfully represents that on the 26th day of March, 1867, he filed in this hon. court his libel against the said steamer "Lulu," her boats, &c., &c., to enforce against said steamer a maritime lien for sundry supplies & materials furnished said steamer, to the amount of nineteen hundred & fifty-five ^{15} dollars, with legal interest thereon; that said steamer has since been sold by the United States marshal for said district under an order of this court passed in a suit entitled James A. Skinner & William H. Forsyth vs. steamer "Lulu," & the proceeds are now in the registry of this hon'l. court for distribution.

Wherefore y'r petitioner prays that his said libel may be consolidated with the said suit of James A. Skinner & Wm. H. Forsyth vs. the said steamer Lulu, & that his said claim may be allowed out of the said proceeds, & he will ever pray, &c.

ORVILLE HORWITZ,
Proctor for James Boyce.

Order.

Leave granted as prayed in foregoing petition.

WILLIAM F. GILES.

JUNE 3d, 1867.

HENRY R. HAZELHURST & WILLIAM D. WEIGAND *vs.* STEAMER "LULU." } Libel filed 27 March, 1867.

Libel.—In admiralty.

To the Honorable William F. Giles, judge of the district court of the United States for the district of Maryland:

64 Henry R. Hazelhurst and William D. Weigand, of Baltimore City, in trade and trading under the name and firm of Hazlehurt and Company, machinists, steam-engine builders, and shipwrights, exhibit this their libel against the steamer Lulu—whereof Daniel C. Childs is, or lately was, master, now lying in the port of Baltimore, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court—her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein in a cause of contract, civil and maritime. And thereupon the said Hazlehurst and Weigand doth allege and articularly propound as follows, to wit:

First. That the said steamer Lulu was, at the time when the repairs, work, and labor, and materials hereinafter mentioned were done and furnished, a foreign vessel, owned by some person or persons not residing in the State of Maryland, and who are to the libellants unknown.

Second. That on or about the month of July, A. D. eighteen hundred and sixty-six, the said steamer then being in the port of Baltimore aforesaid, in the State aforesaid, the said ———, master of said steamer, represented to the libellants that the said steamer stood in need of the repairs, work, and labor, and materials hereinafter mentioned in order to render her seaworthy & competent for the maritime service in which she had been engaged, and which designed to be continued, and requested said libellants to make such repairs, and to furnish such work and labor and materials; and that the libellants, in pursuance of such representations and requests, on the days hereinafter mentioned, and at the said
65 port of Baltimore, undertook to repair, and did repair, and furnish work, labor, and materials to the said steamer of the kind and quality and of the value of four thousand two hundred and three dollars thirty-five cents, and at the dates more particularly described and stated in the accounts hereto annexed and made part hereof. And which work was also made and done with the sanction of D. F. Keeling, the agent and consignee of said steamer.

Third. That the said repairs, work, and labor, and materials were so done and furnished by the libellants on the credit of the said steamer, and were suitable, proper, and necessary for the purpose of enabling the said ship or steamer to proceed to sea with safety.

Fourth. That the aforesaid sum of four thousand two hundred and three dollars thirty-five cents still remains wholly unpaid and due to the libellants, except the sum of sixteen hundred dollars mentioned in the account hereunto annexed, the balance due being twenty-six hundred and three dollars thirty-five cents, although the libellants have often requested the said Daniel C. Childs, the aforesaid master of the said ship, to pay the same, and also requested the same of said agent and consignee aforesaid.

Fifth. That all and singular the premises are true.

Wherefore these libellants pray that process in due form of law may issue against the said steamer Lulu, her boats, tackle, apparel, and furniture, and that this honorable court will pronounce for their aforesaid demand, and decree the same to be paid, with costs, and for such other and further relief as to right and justice may appertain, and as the court is competent to give in the premises.

66

HAZLEHURST & CO.,
By H. R. HAZLEHURST, *Partner.*

GEO. H. WILLIAMS,
Proctor for Libellants.

Sworn to before me this 27th March, 1867, by H. R. Hazlehurst in open court.

JAS. W. CHEW, *Clk Dist. Ct.*

[U. S. 5-cents int. rev. stamp.]

REC. 449—3

Accounts.

VULCAN WORKS, *Baltimore, August 16th, 1866.*

Steamer Lulu & owners to Hazlehurst & Co., DR.

July 31	Cast iron:			
	13 H. H. plates & guards	149	7	10 43
	Wro't iron:			
	13 coll. bolts for H. H. plates, 32; band, 3	35		
	Wrench, 6; wedges, 2; splicing staunchions, 2	10		
	4 lazy bars for boiler	28		
		73	8	5 84
	Bolts, &c., for boiler condenser, &c	169	20	33 80
	Composition:			
	2 guards & valves & 1 E seat for fresh-water safety-valves	76¼	40	30 50
	Hauling, $2; green paint, $4 50			6 50
	Gum for H. H. plates & joints			16 75
	Gas tar, 75; mixed paints, $3; L. wick, 50			4 25
67	Files, 4 50; comp'd bolts, $2 30; brass screws, 25			7 05
	Pine for patterns of valves, &c., &c			1 60
	300 condenser tubes	412½	65	268 13
	Boiler iron for boiler, ash shorts, &c	647	11	71 17
	Sheet lead for fur plates			1 95
	Copper bolts for valves			50
	Pattern-makers' work, hours	74	37½	27 75
	Fitters "	711	37½	266 63
	Use of lathes, turning, &c "	68	90	61 20
	Boiler-makers' work "	1,523	37½	571 13
	Laborers' " "	80	22½	18
	Carpenters' " "	4	37½	1 50
	Use of forges "	44	90	39 60
Aug't 7	Wro't iron:			
	1 slice bar, 40; 2 F. hooks, 24; eye-bolt, 1; key for pedestel, 12	77	8	6 16
	Boiler iron for boiler	381	11	41 91
	Cement, 4 20; sheet lead, 5 40; white lead, $1 35			10 95
	Sheet iron for ash bucket slides on deck	165	13	21 45
	Forward			$1,524 75
	Forward			$1,524 75
	Bolts, washers, &c., for boiler	242	20	48 40
	Rivets " "	106	12	12 72
	Comp'd bolts for con. plates			1 80
	Gum for H. H. plates, $5; brace, 25			5 25
	Liners, (wro't iron & copper)			1 25
	Rags, $2; benzine, $3; screws, 75			5 75
	1 patent tube cleaner			45
	Paint brush, $1 50; lamp wick, 75; jenny, $3			5 25
	A. K. Rollins, coppersmith's bill			12 44
68	Pattern-makers on condenser grummets, hrs.	30	37½	11 25
	Fitters' work "	401	37½	150 38
	Use of lathes, turning, &c "	8	90	7 20
	Grinding key for M. bearing "	2	$1	2 00
	Boilers-makers' work "	435	37½	163 13
	Carpenters' " "	3	37½	1 13
	Use of forges "	17	c 90	15 30
				$2,013 00
	Cr.			
	By old compo. fresh-water safety-valves, 42, 20		8 40	
	" " " compo. condenser tubes, 595, 15		89 25	
				97 65
				$1,915 35

Approved: DANIEL C. CHILDS.

VULCAN WORKS,
Baltimore, 31st August, 1866.

St'm'r Lulu to Hazlehurst & Co., DR.

Wro't iron:				
2 ladders to fire-room		152	8	12 16
Bolts for do & for feed-pipe		4	20	80
Composition:				
For water-pipe, 1; V for feed safety, 7		8	40	3 20
Ferny				1 60
Pattern-makers on valve	hours	5	40	2 00
Fitters on board " &c	"	27	40	10 80
69 Lathes on throttle-valve, chest, & follower	" 10			
" " check V., &c	" 9			
	—	19	90	17 10
Drilling ladders	"	10	50	5 00
Boiler-makers on bunkers, &c	"	34	40	13 60
Forges on ladders	"	11	90	9 90
				$76 16

VULCAN WORKS,
Baltimore, 29th Sept., 1866.

St'm'r Lulu to Hazlehurst & Co., DR.

Cast iron:				
7 double & 1 single grate bars		410	5	20 50
Wro't iron:				
Slice bar, 50; pin & liner for exc., 8; splc'g S. bar C. hooks, 21		79	8	6 32
Bolts for boiler, 6; for del. pipe, 3; for ecc., 2		11	20	2 20
6 ⅞-rods & washers for flues		26	8	2 08
Composition:				
Water-valve, 1½; tail piece for val. guage, ¼		1¾	40	70
Hauling, 75; ferry, $1 70; T pipe, 50				2 95
Boiler iron for boiler, 11c; cement, 25				36
Pine for patterns for G. bars, pd				1
Pattern-makers on "	hours	15	40	6
Fitters on board	"	60	40	24
Lathes on W. pipe, 2; V. springs, 2; bolts for pipes, 2		6	90	5 40
Boiler-makers on board	"	60	40	24 00
Carpenters on wood in brasses	"	2	40	80
Forges on S. bar & splicing	" 8			
70 " " liner for ecc., 2; & B. eng. bolts, &c., 1.	" 3			
" " pin for ecc., 3; rods for flues, 3	" 6			
	—	17	90	15 30
				$111 61

VULCAN WORKS,
Baltimore, 31st October, 1866.

St'm'r Lulu to Hazlehurst & Co., DR.

Cast iron:			
24 double & 2 single grate bars	1,385	5	69 25
Wro't iron:			
Wrench & splc'g same, 6; tools & repairs to same, 91..97			
Plug for pipe, 2; eye-bolts for bunkers, &c., 15.....17			
Hooks, eyes, & braces " " 52			
—	116	8	13 28
New ends & splc'g tubes	6	10	60
Bolts for W. barrow, 2; for st'm pipe, 2; for condenser, 6.10			
" for C. rod, 44; stuff'g-box, 1; boiler & bunkers, 33.78			
—	88	20	17 60
Heel-bolt, 1; on maul & C. bars, 2	3	40	1 20
Copper liners for main bearing.....32			
" " C. rod, 3; bolts for valve, 3 6			
—	38	50	19
Composition:			
Bolts for air-pump & valve, 9; bilge-pump valve, 1½..10½			
" & nuts toll. for condenser, 11; comp. for condenser, 7 17			
Hose coupl'g to condenser, 2; bush'g for del'v., 9½....11½			
2 flanges for B. pipe, 23; 2 keys for water-cock, 6 29			
P ring for D. pump, 2¼; for W. pipe, 2..... 4¼			
Yellow metal for ship's bottom..... 2½			
—	74¾	40	29 90
Lead weight for F. water safety-valve.....	75	15	11 25
2 ft. of 1½ " steel for drift, $4 56; 3 chisels, $3.....			7 56
71 Boiler iron for boiler.....	6	11	66
Cement, 45c.; hauling, $3 75; files, $12.....			16 20
Lignum-vitæ pack'g for air-pump	40	25	10
Pine for patterns, $1 60; leather for valves, $1 25.....			2 85
Lead pipe for bilge, 9 lbs., $1 80; soldering, $1.....			2 80
Patching del. pipe, &c., $3 75; repairs to oil pipes, cups, &c., 6 25.....			10
Copper on old blow-out, $2 50; brass flange & labor, $9 50.			12 00
Ferry, $3 25; repa's to mercury val. guage, $7 50			10 85
500 flues for boiler, 2' by 29" long, 1,208⅓ ft		40	483 33
Pattern-makers on grummets for condenser, 54; bush'g for V., 5; bolts, 2; blank heads, 5	66	40	26 40
Forward.....			$744 73
Forward.....			$744 73
Fitters cutting & testing tubes..... hours 17			
Piston, 11; brasses & lining same, 42..... " 53			
Del'y valve, 16; valve seat, 4; C. shaft, 1..... " 21			
Sundr's at shop & on board..... " 690			
— 781	781	37½	292 88
Lathes on piston, 2; register, 3; flange, 4..... " 9			
Brass & bolts for A. pump piston, 12; toy cocks, 6. " 18			
Plugs for condenser, 2; bolt and nut for B. P. valve, 2 ..... " 4			
Bolts for F. valve, 8; cocks, key, & W. pipe, 10; thimbles, 10 ..... " 28			
Bolts & nuts for condenser, 10; bolts for A. pump toll., 2..... " 12			
Connect. for W. pipe, 1; lignum-vitæ pack'g, 6. " 7			
Bolts for C. rod, 36; C. pin brasses, 10; rect. valves, 5..... " 51			
— 129	129	90	116 10
Grinding copper liners, 8; del. valves, 3..... " 11			
Compo. nuts, 2; water-cocks, &c., 9..... " 11			
— 22	22	$1 25	27 50

Boiler-makers on board	"	....	398	37½	149 25
Laborers on sundries	"	....	110	20½	24 95
Carpenters on bolts in bunkers	"	5			
72 Joint & V., 4; becking for pump, 43	"	47			
			52	37½	19 50
Forges on tools, wrenches, &c	"	26			
C. rod bolts, 3; braces & eye-bolts for bunkers, 10	"	13			
Splicing tubes, 4; copper liners, 22; plug, 1	"	27			
			66	90	59 40
					1,434 11
Cr.					
By old cast-iron grate bars, 400, ¾				3 00	
" " wro't-iron scrap, 350, 1½				5 25	
					8 25
					$1,425 86

VULCAN WORKS,
Baltimore, 30th Novemb'r, 1866.

St'm'r Lulu to Hazlehurst & Co., DR.

Cast iron:			
24 double & 2 single grate bars	1,405	c 5	70 25
Wro't iron:			
Key for guide rod, 1; wrench, 6; liner for heater, 10	17		
4 clamps & 1 staple for hatch, 5; stuff'g bolts, 9	14		
	31	c 8	2 48
Bolts for boiler, ash pan, &c	28	20	5 60
Steel, 4; chisels, 6; reamer, 1	7	40	2 80
Composition:			
For valve on cyl., ¾; sted bolt for force-pump, 5	5¾		
" bushing for pump valve	4		
	9¾	40	3 90
Finished bib-cock on boiler			6 50
Sheet lead for boiler patches, $1 35; brass wire for H. rail, 38			1 73
Compo. for bush'g for stm. whistle, 20; em. paper, 10			80
Rivits for boiler, 38; ferry, $3; files, $3			6 38
Soldering joint on pipe, $1; hauling V. guide, $1			2
73 Hauling new & old G. bars, tools, &c			5 63
Fitters at shop & on board on sund'r	ho's 109		
Fitters, V. guide, &c., 12; C. rod cap, 1	" 13		
	122	37½	45 75
Lathes, turning nuts out of valve, &c	" 3		
Sheo. bolt & nut for S. valve, bush'g, &c	" 10		
Cock, 3; W. pipe, 1; stuff'g-box bolts, 8	" 12		
Bush'g for whistle, 1; guage cock & C. rod cap, 2	" 7		
	32	90	28 80
Grinding stuff'g-box nuts	" 2		
" st'm chest "	" 1		
	3	$1 25	3 75
Boiler-makers on board	"	170	37½	63 75
Forges on liner, 1; tools, &c., 2; reamer, 1	" 4		
Stuff. box bolts, &c., 2; wrench, 2; clamp & staple 2	" 6		
	10	90	9
			$259 12
Cr.			
By old cast-iron grate bars	600	*a* ¾	4 50
			254 62

VULCAN WORKS,
Baltimore, 31st Decemb'r, 1866.

St'm'r Lulu to Hazlehurst & Co., DR.

Wro't iron:			
2 pins for link motion, 20; 8 toll bolts & nuts, 46.....66			
1 box wrench, 10; 8 spare do., 49.....59			
—	125	c 8	10
Bolts for sky-light, 7; 2 bolts & nuts for ecc., 21.....	28	20	5 60
Steel chisels, 1; bolt for V., 1; thimbles, 4.....	6	*a* 40	2 40
2 copper patches for boiler.....	15	*a* 50	7 50
2 files on ecc. rod, $3; hauling, $3 50; ferry, $3.....	.....	.....	10 25
Fitters on guides, 8; ecc. pins, 7; ecc. strap, 5; toll bolts, 5.....hours, 25			
74 " on sundries at shop, 4; & on board, 128.... 132			
—	157	37½	58 88
Lathes on toll bolts, 32; st'm-chest bolts, &c., 17.....49			
Pins for ecc. rod, 21; ecc. rod thimbles, &c., 15.....36			
—	85	*a* 90	76 50
Grinding foll-nuts.....	2	$1 25	2 50
Drilling foll. nuts, &c., 30; sink'g V. gear.....	42	c 50	21
Forges on chisels, &c., 2; foll. bolts & nuts, 20.....22			
Copper patches, 3; pins for link motion, & 7.....10			
Wrench, 3; steel thimble, &c., 6..... 9			
—	41	*a* 90	36 90
			$231 53

VULCAN WORKS,
Baltimore, 31st Jan'y, 1867.

St'm'r Lulu to Hazlehurst & Co., DR.

Hauling tubes.....	.....	.....	3 75
Lathes on ecc. pin & thimbles.....hours	6	90	5 40
Carpenters on blocks for links..... "	5	c 40	2
			11 15

VULCAN WORKS,
Baltimore, 28th Feb'y, 1867.

St'm'r Lulu & owners to Hazlehurst & Co., DR.

Copper liners for ecc.....	1*a*		65
Sheet brass liners.....	4½	*a* 50	2 25
Boiler iron for boiler	2	*a* 11	22
Bolts & washers.....	16½	*a* 20	3 30
Ferriage, 50; cement, $1 40	.....	.....	1 90
75 Fitters in liners.....hours	2	37½	75
Boiler-makers' work..... "	50	37½	18 75
Forges on tools & liners..... "	2	*a* 90	1 80
			$29 62

VULCAN WORKS,
Baltimore, March 14, 1867.

St'm'r Lulu to Hazlehurst & Co.

Wro't iron:			
2 liners for C. head, 7; nut for V. stem, 18 25			
1 countersunk bolt for st'm chest 2			
—	27	*a* 8	2 16
1 copper liner for C. rod	8	*a* 60	4 80
1 steel set screw	1	.....	40
Brass wire for pinning liner on brass	1	.....	50
2 files used on brasses	.....	.....	3
Boiler iron for boiler	6	11	66
Bolts & washers "	12	20	2 40
Cement, $1; white lead, 25; sheet lead, 50	.....	.....	1 75
Fitters on brasses & liners ..... hours 28			
" " V. stem & nut ..... " 11			
" at shop & on board ..... " 80			
—	119	37½	44 63
Lathes on brasses ..... " 20			
" V. stem & nut ..... " 11			
" countersunk bolt ..... " 4			
—	35	90	31 50
Drilling brasses	2	50	1
Grinding liners for brasses	5	1 25	6 25
Boiler-makers at shop & on board	80	37½	30
76 Carpenters	1	.....	40
Laborers on board helping	20	22½	4 50
Forges on liners, 7; guides for pump, 1 8			
" countersunk bolt & tools 2			
" V. stem nut, 4; set screw, 1 5			
—	15	90	13 50
			$147 45

Corest: W. H. DEWALT

VULCAN WORKS,
Baltimore, ——, 186 .

St'm'r Lulu & owners to Hazlehurst & Co., DR.

1866.			
July 31.	To am't of bill rendered	1,444 28	
Aug. 31.	" " "	471 07	
" "	" "	76 16	
Sept. 29.	" " "	111 61	
Oct'r 31.	" " "	1,425 86	
Nov. 30.	" " "	254 62	
Dec'r 31.	" " "	231 53	
1867.			
Jan. 31.	" " "	11 15	
Feb. 28.	" " "	29 62	
March 14.	" " "	147 45	
			$4,203 35
1866.	Cr.		
Oct. 31.	By cash	600 00	
Nov. 30.	" "	500	
1867.			
Jan. 31.	" "	500	
			1,600 00
			$2,603 35

Attachment.

77 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

[SEAL] We command you that you attach, seize, take, and safely keep steamship Lulu, her boats, tackle, apparel, and furniture, to answer the libel of Henry R. Hazlehurst and William D. Weigand, in a cause of contract, civil and maritime; and how you shall execute this precept you make known to us in our district court, for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 27 day of March, 1867.

JAS. W. CHEW, *Clk Dist. C't.*

Marshal's return.

Atta'd March 27, '67. Advertised.

W. BONIFANT, *U. S. Marshal.*

Claim & answer.

In admiralty.—In the district court of the United States for the Maryland district.

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

The claim and answer of the New York Guaranty and Indemnity Company, a corporation incorporated by the laws of the State of New York, intervening for their interest, to the port of New York, in
78 the State of New York, to the libel of Henry R. Hazlehurst and William R. Weigand, trading under the name and firm of Hazlehurst & Company, alleges as follows:

First. That they are the owners of the steamer Lulu, as appears by a bill of sale of said vessel duly recorded in the custom-house of New York; and that she was duly transferred and conveyed to the said defendant by a bill of sale dated 24th August, 1866, made by her owners, Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as appears by said bill of sale duly recorded in the custom-house of the port of New York:

Second. That it is true as stated in said libel that the said steamer Lulu, between the 31st day of July, 1866, & the 31st day of January, 1867, the period during which the repairs mentioned in said libel are alleged to have been made, was a vessel owned by persons not residing in the State of Maryland.

Third. That this respondent does not know that the repairs, work, labor, & materials, alleged to have been furnished to said steamer, were furnished, nor that they were supplied upon the representation of the master that she stood in need of them to render her seaworthy & competent for the maritime service in which she was engaged & which was designed to be continued; nor has this respondent any knowledge

of any of the several matters charged in the first article of said libel, & therefore does not admit but denies each and all of them.

Fourth. That this respondent hath no knowledge that the said
79 work, labor, & materials were furnished on the credit of the said steamer, and therefore does not admit but denies the same.

Fifth. That the said steamship was engaged in the carriage of passengers and freight between the ports of Baltimore, Maryland, and Charleston, South Carolina, between the 31st of July, 1866, and the 31st of January, 1867, and plying regularly between said ports, and that she had been so employed for a long time prior to 31st July, 1866.

Sixth. That while the defendant is the true and lawful owner of the said vessel, by a good and lawful transfer to them by the said Charles A. Whitney, Samuel P. Griffin, & William H. Wickham as aforesaid, yet they admit that the said sale, although absolute in its terms, was subject to an agreement, that on the repayment by the defendant of the sum of twelve thousand dollars, with interest, at the rate of seven per centum per annum, within six months from the date of said bill of sale, together with all commissions and charges properly due, that the defendants would retransfer to the said William H. Wickham, Charles A. Whitney, & Samuel P. Griffin the said steamer, the Lulu.

Seventh. That more than six months have elapsed since the date of said bill of sale, but the said Charles A. Whitney, Samuel P. Griffin, & William H. Wickham have, and each of them hath, failed to pay to the defendant the said sum of twelve thousand dollars, so advanced as aforesaid, or any part thereof, or any interest due thereon, or any commissions properly chargeable against said vessel and her former owners.

80 Eighth. That if the claim of the libellants be just, and constitutes a lien on said steam-vessel, which the defendants does not admit but denies, the same ought to be deferred to the claims, rights, & title of this defendant in & to said steamer Lulu.

Ninth. That all & singular the premises are true.

Wherefore the respondent prays that this honorable court will be pleased to pronounce against the libel aforesaid, & to condemn the libellants in costs, & otherwise law & justice to administer in the premises.

WM. MEADE ADDISON,
Proctor for Respondent.

SOUTHERN DISTRICT OF NEW YORK,
State & County of New York, ss:

On this 2 day of April, one thousand eight hundred and sixty-seven, personally came before me Joshua J. Henry, who, being by me duly sworn, deposes and says that he resides in the said county of New York, and that he is the president of the New York Guaranty and Indemnity Company, respondents above named; & that the foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSHUA J. HENRY.

Sworn to before me this 2d day of April, 1867.

[SEAL.] JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of New York.

81 *Petition.*

In the district court of the United States for the district of Maryland.

SKINNER & FORSYTH
vs.
THE STEAMSHIP LULU.

In admiralty.

To the Honorable William Fell Giles, judge of the district court of the United States in and for the Maryland district:

The petition of Henry R. Hazlehurst and William D. Weigand, partners in trade, trading under the name and style of Hazlehurst and Company, respectfully shows to your honor that heretofore your petitioners exhibited in this honorable court their libel against the steamship Lulu and her owners; and that since the filing of said libel the said steamship Lulu has been, by order of your honorable court, sold under the libel of William H. Dewalt and others. Your petitioners, therefore, pray your honor to pass an order in the premises consolidating their case with that of said William H. Dewalt and others, to the end that they may receive their proportion of the amount received from the sale of steamer, and the costs by them in that behalf sustained, and such other relief as they may be entitled to have; and your petitioners will ever pray as in duty bound, &c.

GEORGE H. WILLIAMS, *Proctor.*

Order.

Ordered, upon the foregoing petition, this ninth day of April, A. D. 1867, that the prayer thereof be granted, and the said causes
82 be, and they are hereby, consolidated accordingly.

WILLIAM F. GILES.

GEORGE A. COLEMAN & EDWIN BAILEY
vs.
STEAMSHIP LULU.
Libel filed March 28th, 1867.

Libel.—In admiralty.

To the Honorable William Fell Giles, judge of the district court of the United States for the district of Maryland:

George A. Coleman & Edwin Bailey, of the city of Baltimore, partners, trading as Coleman & Bailey, exhibit this their libel in a cause of contract, civil and maritime, against the steamship "Lulu"—wherof Daniel C. Childs now is, or was lately, master—her boats, tackle, apparel, & furniture, now lying in the port of Baltimore, in the district aforesaid, within the admiralty & maritime jurisdiction of this honorable court.

And thereupon the libellants allege & articulately propound as follows, to wit:

First. That said steamship being in the port of Baltimore, which was not her home port, & needing supplies to enable her to prosecute voyages which she was about to make upon the high seas, & it being impossible to procure supplies otherwise than upon the credit of said steamship, the libellants, at the request of her said master, furnished such supplies upon the credit and responsibility of said steamship, as well as of her said master & owners, & that a schedule, showing the kind

& value of said supplies, & the times when they were furnished,
83 marked "Exhibit A," is herewith filed as a part of this libel, &
that said steamship was thereby enabled to prosecute, & did so prosecute, & continue her aforesaid voyages.

Second. That the sum of $787 58, as shown by said schedule or accounts, with interest thereon, remains due by said steamer to the libellants for said supplies, & that the master and owners of said steamer, though requested to pay the same, have neglected & refused so to do.

Third. That all & singular the premises are true, and within the admiralty & maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process, in due form of law, may issue against the said steamship "Lulu," her engine, machinery, boats, tackle, apparel, & furniture, and against all persons who may lawfully intervene for their interest therein, & that this honorable court will pass a decree for their aforesaid demand & costs.

WALLIS & THOMAS,
Proctors for Libellants.

Schedule "Exhibit A."

Steamship Lulu & ow's, bo't of Coleman & Bailey—

Nov. 26.	1 bbl. ex. flour, 14 00; 41 lbs. lard, *a* 20, 8 20	22 20
	20 lbs. cabin butter, *a* 43, 8 60; 20 lbs. crew butter, *a* 40, 8 00	16 60
	2 gals. table butter & jug, $2 75; 35 lbs. farm coffee, *a* 12, 4 20	6 95
	81 lbs. P. bread, 9, 7 29, & bbl; 60 lbs. brown sugar, *a* 14, 8 40	16 19
	12 lbs. crushed sugar, *a* 19, 2 28; 3 boxes salt, *a* 15, 45.	2 73
	6 box. yeast powder, 1 50; 2 lbs. salaratus, *a* 18, 36...	1 86
84	3 scrub brushes, *a* 30, 90; 3 cans cond. lye, *a* 40, 1 20.	2 10
	25 lbs. brown soap, *a* 14, 3 50; 6 cans cond. milk, 2 00.	5 50
	7 lbs. vermecella, *a* 18, 1 26; 2 doz. lamp-wick, 25, 50.	1 76
	2 lbs. potatoes, *a* $3, 6 00; 2 corn brooms, *a* 40, 80....	6 80
	5 gals. coal oil, *a* 80, 4 00, & can, 1 50; 23 lbs. deep-sea line, *a* 40, 9 20	14 70
	1 gal. boiled oil, 1 90; altering lamps, 3 00	4 90
	94 lbs. manilla rope, 25, 23 50; 1 copper lamp-feeder, 2 25	25 75
	2 balls lamp-wick, *a* 20, 40; 1 doz. sperm-oil wick, 25..	65
		$128 69

Approved:

DANIEL C. CHILDS.

BALTIMORE, *March 25th*, 1867.

Steamship Lulu & ow's, bought of Coleman & Bailey—

Dec. 11.	1 bbl. ex. flour	12 75
11.	15 lbs. ground coffee, *a* 36, 5 40; 60 lbs. b. sugar, *a* 14, 8 40	13 80
	13 lbs. ship tea, *a* 90, 11 70; 15 lbs. cabin butter, *a* 42, 6 30	18 00
	15 lbs. butter for crew, *a* 37, 5 25; 2 boxes table salt, *a* 15, 30	5 55
	1 peck coarse salt, 45; 4 jars pickles, *a* 75, 3 00	3 45

	6 cans yeast powder, 1 50; ½ doz. knives, 2 25.....	3 75
	½ doz. plated forks, 3 50; 6 can cond. milk, 2 40	5 90
	10 lbs. lard, *a* 20, 2 00; 2 cans cond. milk, *a* 40, 80 ..	2 80
	4 lbs. A. candles, *a* 30, 1 20; ½ doz. nutmegs, 18	1 38
	2 balls lamp-wick, *a* 20, 40; 4 gal. lamp oil, *a* $2, 8 00.	8 40
	3 gal. coal oil, *a* 75, 2 25; 1 bot. pepper sauce, 38	2 63
	½ box raisins, 2 63; 3 lbs. potatoes, *a* $3, 9 00.....	11 63
	25 lbs. white lead, *a* 18, 4 50; 25 lbs. black paint, *a* 14, 3 50.....	8 00
	½ gal. copal varnish, 2 25, & can, 38; 1 varnish brush, 85.....	3 48
85	22 lbs. manilla rope, *a* 25, 5 50; 25 lbs. spun yarn, *a* 22 5 50.....	11 00
	6 lbs. oakum, *a* 15, 90.....	90
		$113 42

Steamship Lulu & ow's bo't of Coleman & Bailey—

1866.			
Dec'r	12.	1 deep-sea lead, 30 lb., 17, 5 10; 1 bbl. extra flour, 14 00.....	19 10
	28.	10 lbs. butter, *a* 46, 4 60; 3 gal. signal oil, *a* $2, 6 00.	10 60
		5 gal. paint oil, *a* 1 80, 9 00; 50 lb. white lead, *a* 17, 8 50.....	17 50
1867.		1 large paint brush, 1 25; ½ gal. copal varnish, 2 50.	3 75
Jan.	2.	1 bbl. potatoes, 3 00; 12 lb. lead, *a* 20, 2 40.....	5 40
	3.	2 gal. boiled oil, *a* 1 80, 3 60; 25 lb. pure lead, *a* 17, 4 25.....	7 85
		1 lb. patent dryers, 20; 1 lb. burnt umber, 40.....	60
		1 doz. large iron screws, 50; 4 lb. gal. tacks, *a* 35, 1 40.	1 90
	7.	2 lb. gal. tacks, 70; 5 lb. crew butter, *a* 45, 2 25.....	2 95
	8.	5 lb. crew butter, *a* 40, 2 00; 10 lb. codfish, *a* 10, 1 00	3
		1 bot. Wor. sauce, 75; 2 gals. boiled oil, 1 80, 3 60 ..	4 35
		1 paint brush, 1 25; 25 lbs. bl'k paint, *a* 14, 3 50....	4 75
		2 gals. boiled oil, *a* 1 80, 3 60; 1 lb. patent dryers, 20.	3 80
	11.	2 " do. do. 1 65, 3 30; 25 lb. bl'k paint, *a* 12, 3 00	6 30
		1 corn broom, 40; 1 cane broom, 65	1 05
		1 can cond. lye, 40; 3 cans cond. lye, 1 20	1 60
	14.	6 lb. brown sugar, *a* 14, 84; ¾ gal. syrup, 75.....	1 59
		3 corn brooms, *a* 40, 1 20; 1 lb. gal tacks, 35.....	1 55
	22.	5 lb. flour, 50; 4 lb. lard, *a* 20, 80.....	1 30
		2 lb. hemp twine, *a* 85, 1 70; 1 bbl. Ches. gro. flour, 14 00.....	15 70
		1 bbl. potatoes, 3 75; 6 lb. butter, *a* 40, 2 40	6 15
		15 lb. brown sugar, *a* 14, 2 10; 4 lb. mixed tea, *a* 1 50, 6 00	8 10
		6 bot. yeast powder, 50; 2 bot. pepper, *a* 50, 1 00....	2 50
86	23.	¼ lb. cinnamon, 38; 6½ lb. manilla rope, *a* 25, 1 63 ...	2 01
		1 gal. syrup, 1 00; 6 lb. lard, at 20, 1 21.....	2 20
		3 can milk, 90; 1 gal. boiled oil, 1 65.....	2 55
		To amount forward.....	$138 15
1867.		To amount forward.....	$138 15
Jan.	28.	2 gal. copper paint, *a* $7, 14 00; 5 lb. codfish, *a* 10, 50.	14 50

1 ham, 11 lb., *a* 20, 2 20; ½ gal. copper paint, *a* $7, 3 50 ..... 5 70
31. 6 lb. butter, *a* 40, 2 40; 6 lb. lard, *a* 20, 1 20 ..... 3 60
8 lb. B. sugar, *a* 14, 1 12; 2 bot. essences, 75..... 1 87

$163 82

Steamship Lulu & ow's bo't of Coleman & Bailey—

1867.

Feb'y 6. 1 bbl. corned beef, 25 50; ½ bbl. corned pork, 16 00.. 41 50
1 " extra flour, 14 00; ½ " corn meal, 3 50..... 17 50
85 lb. P. bread, *a* 9, 7 65, & bbl., 50; 1 bu. white beans, 3 85 ..... 12 00
50 lbs. rice, *a* 12½, 6 25; 25 lbs. gr. Rio coffee, 35, 8 25. 14 50
20 lbs. coffee for crew, 12½, 2 50; 75 lb. B. sugar, *a* 14, 10 50..... 13 00
10 lbs. crus. sugar, *a* 18, 1 80; 8 lbs. cabin tea, *a* $1 50, 12 00 ..... 13 80
15 lb. ship tea, *a* 80, 12 00; 1½ gal. golden syrup, *a* $1, 150 ..... 13 50
6 gal. molasses, *a* 80, 4 80; 1 bottle pepper sauce, 38. 5 18
4 cans milk, *a* 30, 1 20; 25 lbs. cabin butter, *a* 42, 10 50..... 11 70
20 lbs. crew butter, 37, 7 40; 1 keg 42 lbs. lard, *a* 20, 8 40 ..... 15 80
5 gals. sperm oil, *a* 3 40, 17 00; 3 gals. coal oil, *a* 75, 2 25 ..... 19 25
3 doz. matches, *a* 30, 90; 1 25 lb. deep-sea lead, 17, 4 25 ..... 5 15
50 lb. codfish, *a* 10, 5 00; 3 bbls. potatoes, *a* 3 75, 11 25 ..... 16 25
½ bbl. No. 1 mackeral, 12 25; ½ box raisins, 2 75 15
10 lb. dried apples, *a* 13, 1 30; 10 lb. dried peaches, *a* 40, 4 00 ..... 5 30
87 4 cans mustard, *a* 62½, 2 50; 3 bottles pepper, *a* 50, 1 50 4
4 boxes table salt, *a* 15, 60; 2 gals. vinegar, *a* 60, 1 20. 1 80
1 doz. yeast powder, 2 75; 1¼ lb. spices, *a* 1 50, 1 87. 4 62
1 box vermicella, 6 lb., *a* 18, 1 08; 4 jars pickles, *a* 62½, 2 50 ..... 3 58
3 lb. salaratus, *a* 20, 60; 15 lb. brown soap, *a* 13, 1 95. 2 55
4 hams, 46 lb., *a* 20, 9 20; 6 lb. ad. candles, *a* 30, 1 80 11
11¼ lb. cheese, *a* 30, 3 94; 3 balls lamp-wick, *a* 20, 60. 4 56
1 doz. flat wick, 25; 6 lb. spun yarn, *a* 25, 1 55..... 1 75
3½ lb. marline, *a* 30, 1 05; 6 corn brooms, *a* 40, 2 50 . 3 45
10 lb. cut nails, *a* 9, 90; 25 lb. manilla rope, *a* 22; 5 50. 6 40
1 door lock, 1 00; 3 jars oysters, *a* 62½, 1 87..... 2 87

$265 99

DANIEL C. CHILDS.

BALTIMORE, *February 19th*, 1867.

Steamship Lulu & ow's bought of Coleman & Bailey—

1867.

Feb. 19. 1 bbl. ex. flour, 14 00; 36 lb. crackers, 17, 6 48, & bbl., 50 ..... 20 98

75 lb. brown sugar, *a* 14, 10 50; 4 cans milk, *a* 30, 1 20	11 70
5 gal. signal oil, *a* $2, 10 00; 3 gal. coal oil, *a* 75, 2 25	12 25
8 bot. yeast powders, 2 00; 3 lb. pepper, *a* 60, 1 80	3 80
2 bot. table salt, *a* 30, 60; 4 jars pickles, *a* 62½, 2 50	3 10
12 lb. brown soap, *a* 13, 1 56; 42 lb. lead, *a* 20, 8 40	9 96
25 lb. cabin butter, *a* 42, 10 50; 20 lb. crew butter, *a* 37, 7 40	17 90
2 gal. table syrup, *a* $1, 2 00; 3 cans cond. lye, *a* 40, 1 20	3 20
2 " paint oil, *a* 1 63, 3 26; 1 keg white lead, 16 lb., *a* 25, 4 00	7 26
1 keg black lead, 25 lb., *a* 12, 3 00; 4 corn brooms, *a* 40, 1 60	4 60
1 piece 3-in. manilla, 65 lb., 24, 15 60; 12 lb. oakum, *a* 13, 1 56	17 16
3 hanks dead line, 3 00; drayage, 75	3 75
	$115 66

88 Approved:

DANIEL C. CHILDS.

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

[SEAL] We command you that you attach, seize, and safely keep steamship Lulu, her boats, tackle, apparel, & furniture, to answer the libel of George A. Coleman & Edwin Bailey in a cause of contract, civil & maritime; and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of March, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 26 day of March, 1867.

JAS. W. CHEW, *Clk Dist. Ct.*

Marshal's return.

Att'd March 26, '67. Advertised.

W. BONIFANT, *U. S. Marshal.*

Claim and answer.

In admiralty.—In the district court of the United States for the Maryland district.

To the Honorable William F. Giles, judge of the district court of the United States for the Maryland district:

89 The claim and answer of the New York Guaranty and Indemnity Company, a corporation incorporated by the laws of the State of New York, intervening for their interest in the American steam-vessel Luu, a vessel belonging to the port of New York, in the State of New York, to the libel of George A. Coleman & Edwin Bailey, trading as Coleman & Bailey, alleges as follows:

First. That they are the owners of the steamer Lulu, as appears by the bill of sale of said vessel duly recorded in the custom-house of New York, and that she was duly transferred and conveyed to the said defendant by a bill of sale dated 24th August, 1866, made by her then owners, Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as appears by said bill of sale duly recorded in the custom-house of the port of New York.

Second. That it is true, as charged in said libel, that the Lulu did not belong to the port of Baltimore, in Maryland, but was owned by persons residing in New York.

Third. That the defendant does not know, &, therefore, does not admit, but denies, that the said steamer needed the supplies charged to have been furnished to enable her to prosecute voyages she was about to make, & denies furthermore that it was impossible to procure said supplies otherwise than upon the credit of said steamer.

Fourth. That the defendant does not know, &, therefore, does not admit, but denies, that said supplies were furnished, & that the prices for the same were fair & just, but if furnished they especially deny that they were furnished upon the credit and responsibility of said steamer or of her present owners; and they are advised and insist that if said
90 supplies were furnished as charged, they do not constitute a lien on said vessel.

Fifth. That said steamship was engaged in the carriage of passengers and freight between the ports of Baltimore, in the State of Maryland, and Charleston, in the State of South Carolina, during the period between the 26th of Nov., 1866, and the 19th of Feb'y, 1867, plying regularly between said ports; and that she had been so employed for a long time prior to Nov. 26, 1866.

Sixth. That while the defendant is the true and lawful owner of said vessel by a good and lawful transfer to them by the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, as aforesaid, yet they admit that the said sale, although absolute in its terms, was subject to an agreement that on the repayment by the defendant of the sum of twelve thousand dollars, with interest at the rate of seven per centum per annum, within six months from the date of said bill of sale, together with all commissions & charges properly due, that the defendant would retransfer to the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, the said steamer, the Lulu.

Seventh. That more than six months have elapsed since the date of said bill of sale, but the Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, have, and each of them hath, failed to pay to the defendant the said sum of twelve thousand dollars so advanced as aforesaid, or any part thereof, or any interest due thereon, or any commissions properly chargeable against said vessel and her former owners.

Eighth. That if the claim of the libellants be just, and constitute a lien on said steamship, which this defendant does not admit, but denies,
91 the same ought to be deferred to the claims, rights, and title of the defendant in and to said steamer, the Lulu.

Ninth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, & otherwise law and justice to administer in the premises.

WM. MEADE ADDISON,
Proctor for Claimant and Respondent.

SOUTHERN DISTRICT OF NEW YORK,
State and County of New York, ss:

On this 2d day of April, one thousand eight hundred and sixty-seven, personally came before me Joshua J. Henry, who, being by me duly sworn, deposes and says that he resides in said county & State of New York, and that he is the president of the New York Guaranty and Indemnity Company, respondents above named, and that the foregoing answer is true to his own knowledge, except as to the matters therein stated on information & belief, and as to those matters he believes it to be true.

JOSHUA J. HENRY.

Sworn to before me this 2d day of April, 1867.
[SEAL.] JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of N. Y.

Petition.

JAMES A. SKINNER & WILLIAM H. FORSYTH *vs.* STEAMER LULU. } In the district court of the United States for the district of Maryland.

92

To the Honorable William Fell Giles, judge of the district court of the United States for the Maryland district:

The petition of George A. Coleman and Edwin Bailey, partners, trading as Coleman & Bailey, respectfully represents that on the 26th March, 1867, they filed in this honorable court their libel against the above-named steamer, to enforce against said steamer a maritime lien for supplies furnished said steamer to the amount of $787 58, with appropriate interest thereon; that said steamer has since been sold by the marshal in pursuance of an order passed by your honor in the above-entitled cause, & the proceeds arising from said sale are now in the registry of this honorable court for distribution.

Wherefore your petitioners pray that their said cause may be consolidated with the above-entitled cause, & [&] their said claim may be allowed out of said proceeds; & they will ever, &c.

WALLIS & THOMAS,
Proctors for Pet'n'rs.

Order.

Leave granted as prayed for in the aforegoing petition.
WILLIAM F. GILES.

APRIL 24, 1867.

Plea.—Filed 13th June, 1867.

In the district court of the United States for the district of Maryland.

GEORGE A. COLEMAN & EDWIN BAILEY *vs.* STEAMSHIP "LULU." }

93 The said libellants say that the New York Guaranty & Indemnity Company has not filed a claim in this cause in accordance with the rules made & prescribed by the Supreme Court of the United States for courts of admiralty & maritime jurisdiction on the instance side of said

courts, which rules are now in force in & binding on this court, & that the answer of said company ought not to be considered by this court, nor ought said company to be allowed to contest the libellants' claim, & that said company has not entitled itself otherwise to be heard in this cause, or in any of the other causes with which this has been consolidated.

WALLIS & THOMAS,
Proctors for Libellants.

In admiralty.—In the district court of the United States for the Maryland district.

JAMES A. SKINNER, WM. H. FORSYTH, *vs.* STEAMER LULU. } Originals to June term, 1867.

To the William F. Giles, judge of the district court of the United States for the Maryland district:

The petition of the New York Guaranty & Indemnity Company, claimant of the Lulu in the above-entitled action, respectfully shows—

That since the institution of said suit ten other suits have been instituted in this court against said vessel by persons claiming to have causes of action against said vessel for necessary supplies, materials, repairs, &c., & for sailors' wages, the parties libellant being as follows:

94 No. 24. Emily Holmes et al.
25. Wm. H. Dewalt & al.
31. David F. Keeling.
32. H. Kimberly.
30. Sam'l R. Waite.
33. Robert G. Rieman & al.
36. James Boyce.
35. George A. Coleman & al.
34. John J. Abrahams & Son.
37. Henry R. Hazlehurst.

That the questions in the cases can be readily tried & determined in one suit, and the continued seperation of said causes serves unnecessarily to increase the costs; that said suits ought not to have been brought; but the libellants therein ought to have intervened in the above-entitled case of Skinner & al. vs. the Lulu.

Wherefore your petitioner prays that this court will pass an order requiring the costs in said last-mentioned causes to be taxed up to this time, and that said causes be consolidated with the said cause of Skinner & al. vs. the Lulu, and that the libellants in said last-mentioned causes be respectively required by the order or decree of this court to pay said costs thus improperly incurred by the unnecessary multiplication of suits; & the said petitioner, &c.

WM. MEADE ADDISON,
Proctor for Petitioner.

Order.

Ordered this 4th day of June, 1867, on the above petition, that
95 the cases therein named be consolidated as prayed with the case of James A. Skinner & Wm. H. Forsyth vs. the Lulu, except those cases already consolidated by the order of this court.

WILLIAM F. GILES.

Petition.

SKINNER & FORSYTH, &c., vs. STEAMER LULU. } Consolidated cases.

To the Hon. Wm. F. Giles, judge of the district court, &c., &c.:

The petition of Coleman & Bailey, James Boyce, Abrahams & Son, Hezlehurst & Weigand, Henry Kimberly, David F. Keeling, R. G. Rieman & Alfred Poor, Skinner & Forsyth, & Samuel R. Waite, Holmes & Holmes, William H. Dewalt, & others respectfully shews that in the original proceeding in this case an order was passed for the sale of the vessel libelled, & the proceeds thereof are now in the registry of this court, & that it is manifest that the amount of net proceeds will be & are insufficient to pay the amount of claims against the said Lulu. That the New York Guaranty & Indemnity Company are now in this court as the owners of said steamer, & they therefore pray that an order may be passed directing the payment of the deficiency to the several libellants, as it may turn out that they are respectively entitled to said sums; and, as in duty, &c.

ORVILLE HORWITZ,
Proctor for Petitioners.

13 JUNE, 1867.—Enoch Pratt, security for costs.

Decree.

96 In the district court of the United States for the district of Maryland.—June term, 1867.

SKINNER & FORSYTH vs. STEAMER LULU.

The libels, answers, evidence, and other proceedings having been duly considered, it is thereupon, this nineteenth day of June, 1867, by the district court of the United States for the district of Maryland, sitting in admiralty, adjudged, ordered, and decreed that the libels filed in this court by Skinner & Forsyth, Holmes & Holmes, Samuel R. Waite, Henry Kimberly, Rieman & Poor, John J. Abrahams & Son, Coleman & Bailey, James Boyce, Hazlehurst & Co., against the steamer Lulu, be, and the same are hereby, allowed as liens to the amount of the respective claims, without interest; and that the libel filed by David F. Keeling be, & the same is hereby, dismissed; and, further, that out of the fund remaining in this court there be paid to Skinner & Forsyth the sum of 27\frac{25}{}$ for costs, & the residue of said fund be distributed as follows, that is to say:

To Skinner & Forsyth, the sum of	$811 11
Holmes & Holmes	557 41
Samuel R. Wait	31 26
Henry Kimberly	498 46
Rieman & Poor	1,411 44
John J. Abrahams & Son	700 34
Coleman & Bailey	1,745 73
James Boyce	1,745 73
Hazlehurst & Co	2,337 46
	$8,796 21

97 And, further, that each party pay his own costs.

WILLIAM F. GILES.

Appeal.

In the district court of the United States for the Maryland district.

JAMES SKINNER, WM. A. FORSYTH,
vs.
STEAMER LULU.

Mr. CHEW, *Clerk of the District Court of the United States for the Maryland District:*

SIR: Please enter an appeal to the circuit court of the United States for the fourth circuit, in & for the Maryland district, in said cause, and in the cases, consolidated therewith, of Emily Holmes & Byron H. Holmes vs. the steamer Lulu, H. Kimberly vs. the steamer Lulu, Samuel R. Wate vs. steamer Lulu, Robert G. Rieman and Alfred Poor vs. steamer Lulu, James Boyce vs. steamer Lulu, George H. Coleman & Edwin Bailey vs. steamer Lulu, John J. Abrahams & Wm. H. Abrahams vs. steamer Lulu, Henry R. Hazlehurst & Wm. D. Weigand vs. steamer Lulu.

WM. MEADE ADDISON,
Proctor for the Claimant, the New York Guaranty & Indemnity Company.

And the same is entered accordingly.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating thereto, be transmitted to
98 the said circuit court to be held at the city of Baltimore on the first Monday in November next; and the same is hereby transmitted accordingly.

Appeal bond.

Know all men by these presents, that I, Enoch Pratt, of the city of Baltimore, in the State of Maryland, am held and firmly bound, unto James A. Skinner & William H. Forsyth, copartners, trading as Skinner & Forsyth; Emily Holmes & Byron H. Holmes, copartners, trading as R. S. Holmes & Son; Samuel R. Waite, Henry Kimberly, Robert G. Rieman, & Alfred Poor, copartners trading as Robert G. Rieman & Co.; John J. Abrahams & William H. Abrahams, copartners, trading as J. J. Abrahams & Son; George A. Coleman and Edwin Bailey, copartners, trading as Coleman & Bailey; James Boyce, Henry R. Hazlehurst, & William D. Weigand, copartners, trading as Hazlehurst & Co., in the just and full sum of eight thousand seven hundred & ninety-six dollars & twenty-one cents, lawful money of the United States, to be paid to the said James A. Skinner & William R. Forsyth, copartners as aforesaid, R. S. Holmes & Sons, Samuel R. Waite, Henry Kimberly, Robert G. Reiman & Co., J. J. Abrahams & Son, Coleman & Bailey, James Boyce, Hazlehurt & Co., their respective heirs, executors, administrators, or assigns; to which payment, well and truly to be made and done, I hereby bind myself, my heirs, executors, & administrators, firmly by these presents. Sealed with my seal, and dated this 26th day of June, one thousand eight hundred and sixty-seven.

99 Whereas, at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore on the first Tuesday in June, in the year of our Lord one thousand eight hundred and sixty-seven, in a cause instituted in said court by the said Skinner & Forsyth as libellants, against the steamer Lulu, it was decreed that

out of the funds to the credit of said cause in the registry of said court that the libels filed in this court by said Skinner & Forsyth, R. S. Holmes & Sons, Samuel R. Waite, Henry Kimberly, Rieman & Poor, trading as Robert G. Rieman & Co.; J. J. Abrahams & Son, Coleman & Bailey, James Boyce, Hazlehurst & Co., against the said steamer Lulu be, and the same are hereby, allowed as liens to the amounts of their respective claims, without interest, and that the libel filed by David F. Keeling be, and the same is hereby, dismissed, &, further, that out of the sum remaining in the court there be paid to Skinner & Forsyth the sum of twenty-seven dollars and ninty-five cents for the costs, & the residue of said fund be distributed as follows, that is to say:

To Skinner & Forsyth, the sum of	$811 11
Holmes & Holmes	557 41
Samuel R. Waite	31 26
Henry Kimberly	498 46
Rieman & Poor	1,411 44
John J. Abrahams & Son	700 34
Coleman & Bailey	703
James Boyce	1,745 73
Hazlehurst & Co	2,337 46
	$8,796 21

100 And, further, that each party pay his own costs.

From which said decree, so as aforesaid passed, the New York Guaranty and Indemnity Company, claimant in the said causes, have prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first Monday in November next:

Now, the condition of the above obligation is such, that if the said New York Guaranty & Indemnity Company, claimant of the said steamer Lulu, shall well & truly prosecute with effect their said appeal, and pay unto the said Skinner & Forsyth, R. S. Holmes & Son, Samuel R. Waite, Henry Kimberly, Robert G. Rieman & Co., J. J. Abrahams & Son, Coleman & Bailey, James Boyce, Hazlehurst & Co., their heirs, executors, administrators, & assigns, the amounts in said decree named as aforesaid, and answer all damages and costs in case the said claimant fail to make good its said appeal, then the obove obligation to be void and of none effect; otherwise to remain in full force & virtue in law.

ENOCH PRATT. [SEAL.]

Signed, sealed, & delivered in presence of—
HENRY JANES.

Bond approved.
June 27, 1867.

WILLIAM F. GILES.

101 In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I hereunto subscribe my name and affix the seal of the said district court this fifth day of September, in the year of our Lord one thousand eight hundred and sixty-seven.

{ SEAL'S PLACE. }

JAMES W. CHEW,
Clerk District Court.

[U. S. 5-cents int. rev. stamp.]

Deposition of Henry Kimberly, witness for appellees, taken before John S. Hanan, esquire, U. S. commissioner for the district of Maryland, at the city of Baltimore, on the 18th October, 1867.

Henry Kimberly, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

I reside in Baltimore City. I am a butcher, & am the libellant in this case. I know the steamer Lulu.

Question. Look at the accounts attached to the original libel in this case filed by you, & state whether those are true & correct accounts as stated.

Answer. They are.

Question. Do you know the signature of Daniel C. Childs, appended as approving some of these accounts?

Answer. I do.

Question. Who was Childs, & are his signatures genuine?

Answer. Childs was captain of the steamer Lulu, & I saw him sign his name of approval on these papers.

102 Question. Upon whose credit were these goods sold?

Answer. Upon the credit of the ship & owners.

Cross-examined:

Question. Do you say that you saw Capt. Childs sign his name to each of the approved bills shewn to you here?

Answer. I did.

Question. When did you commence furnishing the Lulu with provisions, & how long did you continue to do so?

Answer. I file herewith a copy of my accounts with the Lulu, which shews all of my transactions with her. Said paper is marked "H. K., No. 1."

Question. I observe in this account various credits; who made those payments?

Answer. I was paid in the office of Mr. ——— Keeling, by his clerk. I think it was always paid by Keeling's checks. I always got the pay at Mr. Keeling's office.

Question. Why did you go to Keeling's to get your pay?

Answer. It's customary for all ships that come here to have an agent, & I did not know where else to go to get the money.

Question. Was or was not Mr. Keeling the agent of the Lulu?

Answer. I always looked at the thing that way. I always went there.

Question. Did Keeling ever tell you to let the captain of the Lulu have provisions whenever he required them?

Answer. No, sir. He never said a word about it; he never told me.

Question. How came you then to go to Keeling to get your money.

Answer. The captain told me to go there to get my money.

103 HENRY KIMBERLY.

The paper referred to in the foregoing deposition, marked "H. K, No. 1," is as follows, to wit:

DR. *Steamer Lulu in acc't with Henry Kimberly.*

1866.			
June	21.	To 25 lb. beef, 16 c.....	4 00
	"	" vegetables & milk	50

		" " 200 lb. ice	1 00		
"	22.	" 30 lb. beef, 16 c	4 80		
		" " vegetables & milk	60		
"	23.	" 30 lb. beef, 16 c	4 80		
		" " vegetables	55		
		" " 305 lb. beef, 16 c	48 90		
		" " 4,480 lb. ice	20 00		
		" " 2 gallons milk	1 12		
		" " vegetables, &c	6 00		
July	5.	" 28 lb. beef, 16 c	4 48		
		" " vegetables	0 50		
	6.	" 30 lb. beef, 16 c	4 80		
		" " vegetables	1 00		
	7.	" 24 lb. beef, 16 c	3 84		
		" " 307 lb. do., & small meats, 16 c	49 12		
		" " vegetables	5 85		
		" " 4 doz. eggs, 35 c	1 40		
		" " 2 tons of ice	16 00		
					179 26

CR.

	11.	By cash pd. H. K	170 79		
		Disc't	8 47		
					179 26

104 DR. *Steam'r Lulu in acc't with Henry Kimberly.*

1866.

July	17.	To 12 lb. beef, 16 c	1 92		
		" " vegetables	1 00		
	18.	" 40 lb. beef, 16 c	6 40		
		" " vegetables	1 04		
	19.	" 25 lb. beef, 16 c	4 00		
		" " milk	34		
	20.	" 22 lb. beef, 16	3 52		
		" " milk	19		
		" " ½ ton ice	4 00		
		" " salt	25		
	21.	" 32 lb. beef, 16 c	5 12		
		" " ½ bush'l potatoes	1 00		
		" " milk	10		
	23.	" 18 lb. beef, 16c	2 88		
		" vegetables & milk	1 10		
					32 86
130	24.	" 16 lb. beef, 16 c	2 56		
		" " milk & vegetables	50		
	25.	" 16 lb. beef, 16 c	2 56		
		" " vegetables	75		
		" " ¾ ton ice	6 00		
	26.	" 15 lb. beef, 16 c	2 40		
		" " milk	10		
	27.	" 15 lb. beef, 16 c	2 40		
		" " milk	10		
	28.	" 15 lb. beef, 16 c	2 40		
		" " milk	10		
105	30.	" 15 lb. beef, 16 c	2 40		

		" " milk		10	
	31.	" 15 lb. beef, 16 c		2 40	
		" milk, 10 c, & veg't, 45 c		55	
Aug't	1.	" 16 lb. beef, 16 c		2 56	
	"	" milk		10	
	2.	" 16 lb. beef, 16 c		2 56	
	"	" milk		10	
	3.	" 15 lb. beef, 16 c		2 40	
	"	" milk		10	
	"	" 100 lb. ice & 3 egg-plants, 40		1 00	
	4.	" 25 lb. beef, 16 c		4 00	
	"	" vegetab's, 1 15; milk, 10		1 25	
	"	" 150 lb. ice		75	
	"	" 12 lb. beef, 16 c		1 92	
	"	" 25 lbs. ditto		4 00	
					46 06
					$78 92

130 To am't bro't forward 78 92

1866.

Aug't	7.	" 29 lb. beef, 16 c		4 64	
	"	" 334 lb. do & mutton, 16 c		53 44	
	"	" 6 doz. eggs, 30 c		1 80	
	"	" 1 gal. milk & vegetables		6 35	
	"	" 10 lb. beef & 2 tons ice		16 00	
					82 23
	6.	" 27 lb. beef, 16 c		4 32	
	"	" vegetables & milk		95	
					5 27
					$166 42

131 CREDIT.

Aug't	4.	By abate't of am't	4 00	
	24.	" cash paid H. K	157 55	
	"	" 3 pr. ct. disc't	4 87	
				$166 42

106 148 DR. *Steam'r Lulu in acc't with Henry Kimberly.*

1866.

Aug't	18.	To 41 lb. beef, 16 c	6 56	
	"	" 4 lb. lard, 23 c	92	
	"	" vegetables & milk	60	
	20.	" 27 lb. beef, 16 c	4 32	
	20.	" vegetables & milk	1 00	
	21.	" 26 lb. beef, 16 c	4 16	
	"	" vegetables & milk	1 00	
	22.	" 29 lb. beef, 16 c	4 64	
	"	" vegetables & milk	10	
	"	" 350 lb. beef, 16 c	56 00	
	"	" vegetables	4 15	
	23.	" 2 tons ice	16 00	
	"	" mint	15	
Sept'r	1.	" 13 lb. beef, 16 c	2 08	

	" " 1 doz. eggs & veg't	43		
4.	" 28 lb. beef, 16 c	4 48		
"	" vegetables & milk	1 10		
5.	" 28 lb. beef, 16 c	4 48		
"	" veg'bl's & milk	60		
"	" cash on the 3rd	75		
6.	" 12 lb. beef, 16 c	1 92		
"	" veg'bl's & eggs	1 35		
7.	" 30 lb. beef, 4 80, & fish, 1 00	5 80		
"	" vegetables & milk	1 10		
8.	" 357 lb. beef & sm'l meat	57 12		
"	" vegetables	5 20		
"	" 2 tons of ice	16 00		
				202 11

CR.

107 149

Sept.	18. By cash in full	192 01		
	" disc't 5 pr. ct	10 10		
				$202 11

DR. *St'm'r Lulu in acc't with Henry Kimberly.*

148

1866.

Sept'r	21. To 26 lb. beef, 16 c	4 16		
	" " 1 doz. eggs & vegetables	2 25		
	22. " 35 lb. beef, 16 c	5 60		
	" " vegetables & milk	1 75		
	24. " 20 lb. beef, 16 c	4 16		
	" " milk	10		
	25. " 11 lb. beef, 16 c	1 76		
	" " 2 doz. eggs 70, & veg'bl's, 62	1 32		
	" " 250 lb. ice & milk	2 50		
180	26. " 33 lb. beef, 16 c	5 28		
	" " veg'bl's & milk	47		
	27. " 26 lb. beef, 16 c	4 16		
	" " potatoes & milk	38		
	28. " 431 lb. beef, &c., 16 c	68 96		
	" " 21 lb. roast beef	3 36		
	" " vegetables and milk	5 35		
				111 56

181 CR.

Oct'r	25. By cash pd. H. K.	105 98		
	" disc't 5 pr. ct	5 58		
				$111 56

180 DR. *St'm'r Lulu in acc't with Henry Kimberly.*

1866.

Octob'r	11. To 19 lb. beef, 3 04, & veg'bl's, 25	3 29		
"	12. " 28 do. 4 48; milk, 20; lard 14, 3 36	8 04		
	13. " 55 lb. beef & sm'l meat, 16	8 80		
108	" " veg'bl's, potatoes, & milk	3 20		

	15.	" 40 lb. beef, 6 40; milk, 19	6 59	
	16.	" 26 lb. do. 4 16, & 6 lb. steak, 96	5 12	
	"	" milk & vegetables	1 37	
	17.	" 11 lb. steak & roast, 16	1 76	
	"	" milk & veget'bl's	87	
	18.	" 37 lb. beef, 5 92, & extract vanil., *a* 50	6 42	
	"	" apples, milk, & eggs	1 18	
	19.	" 26 lb. beef, 4 16; veg'bl's, 1 56	5 72	
	20.	" 23 lb. do. 3 68; do. 1 40	5 08	
	23.	" 25 lb. do. 4 00; do. 1 37	5 37	
	24.	" 22 lb. do. 3 52; do. 1 90	5 44	
	25.	" 30 lb. do. 4 80; milk & sausage, 55	5 35	
	26.	" 7 lb. do. 1 12; veg'bl's, 1 88	3 00	
	27.	" 35 lb. beef, 16 c	5 60	
	"	" 436 lb. do. & small meat	69 76	
	"	" 4 doz. eggs, 1 40; veg's, &c., 3 50	4 90	
	29.	" vegetables	75	
				157 61

181 CR.

Decem'r	10.	By cash pd. H. K	151 81	
	"	disc't off	5 80	
				$157 61

180 DR. *St'm'r Lulu in acc't with Henry Kimberly.*

1866.				
Nove'r	10.	To 15 lb. beef, 2 40; veg'bl's, 50	2 90	
	12.	" 33 lb. — 5 28; do. 4 68	9 96	
	13.	" 29 lb. — 4 64; chickens, 81	5 45	
	14.	" 38 lb. 6 08, & eggs, 80	6 88	
	"	" 100 lb. cake tallow	14 00	
109 218	15.	" 1 box grapes	2 50	
	"	" 26 lb. beef, 16 c	4 16	
	16.	" 12 lb. do. 16 c	1 92	
	"	" 396 lb. do. & small meat, 16 c	63 36	
	"	" veg'bl's, 3 45, & eggs, 1 42	4 87	
				116 00

219 CR.

Dece'r	10.	To cash pd. H. K	110 20	
		disc't 5 pr. ct	5 80	
				$116 00

Steam'r Lulu to Henry Kimberly, DR.

1866.				
Nov'r	27.	To 21 lb. beef, 16 c	3 36	
	"	" 1 ton ice	8 00	
	28.	" 470 lb. beef & sm'l meat, 16 c	75 20	
	"	" 4 doz. eggs, 45 c	1 80	
	"	" vegetables	5 50	
				93 86

		" " 2 tons ice, Sep'r 27th	16 00		
		" " 2 do. " Octo'r 26th	16 00		
		" " 1,900 lb. " Nov'r 5	7 60		
					39 60
Dec'r	8.	" 1 turkey for Capt. C	2 62		
		" " 8 lb. beef, 16 c	1 28		
	11.	" 10 lb. do. 16 c	1 60		
	12.	" 33 lb. do. 16 c	5 28		
		" " vegetables	1 00		
	13.	" 449 lb. beef & sm'l meat, 16 c	71 84		
		" " vegetables	5 41		
		By abatem't.	89 03		79 07
			9 96		
		" " 1,800 lb. ice	14 40		
110	26.	" 67 lb. beef, 14 c	9 38		
		" " eggs	52		
		" " apples, 30, & vegetables, 37	67		
	29.	" 28 lb. beef, 14 c	3 92		
		" " vegetables, 43, & eggs, 45	88		
	31.	" 36 lb. beef, 14 c	5 04		
1867.					
Jan'y	2.	" vegetables	66		
		" " 30 lb. beef, 14 c	4 20		
	5.	" 41 lb. do 14 c	5 74		
		" " vegetables & eggs	1 00		
		" " 6 lb. mutton, 14 c	84		
		" " meat & vegetables	90		
	8.	" 5 lb. beef	70		
	9.	" 45 lb. meat, 14 c	6 30		
		" " vegetables	58		
	14.	" 40 lb. beef, 14 c	5 60		
		" " vegetables	2 00		
					63 33
	17.	" ditto	2 12		
		" " 30 lb. beef, 14 c	4 20		
	19.	" vegetables	50		
	21.	" 54 lb. beef, 14 c	7 56		
	23.	" vegetables	1 45		
	26.	" 37 lb. beef, 14 c	5 18		
		" " vegetables	1 87		
	30.	" 59 lb. beef & sm'l meat, 14 c	8 26		
		Am't carried forw'd	31 14		275 86
		Am'ts bro't forward	31 14		275 86
Feb'y	2.	To 35 lb. beef & sm'l meat, 14 c	4 90		
	6.	" 24 lb. do. 14 c	3 36		
111		" " 1¼ lb. butter	80		
	7.	" 548 lb. beef, 14 c	76 72		
		" " 2,000 lb. ice	8 00		
					124 92
		" " vegetables	8 66		
	19.	" 13 lb. beef, 14 c	1 82		

	20.	" 15 lb. do. 14 c	2 10	
	"	" vegetables	2 18	
	21.	" 481 lb. beef, 14 c	67 34	
	23.	" vegetables	6 90	
				89 00
March	8.	" 23 lb. beef, 14 c	3 22	
	9.	" 26 lb. do. 14 c	3 64	
	"	" 2 chickens for Capt. C	1 50	
	"	" 5 lb. beef, 14 c	70	
	11.	" 29 lb. do. 14 c	4 06	
				13 12
	15.	" 16 lb. do. 14 c	2 24	
	"	" vegetables 6th, 9th, & 14th	4 01	
	"	" ditto	44	
	22.	" 11 lb. beef, 14 c	1 54	
				8 23
				$511 13

Deposition of Joseph Rundle, witness for the appellees, taken before the same commissioner, at the same place and time.

Joseph Rundle, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth, and saith as follows, to wit:

112 I am a superintendent & salesman for Henry Kimberly, & was from August or September, 1866. I do remember sales made by Mr. Kimberly to the steamer Lulu in the fall of 1866, & the winter of 1866 & 1867, & the spring of 1867. Captain Childs, of the Lulu, ordered those goods. We always sent him what he wanted. The articles were necessary for the boat & her navigation, & were articles of food.

JOSEPH RUNDLE.

Deposition of William Pemberton, witness for appellees, taken before the same commissioner, at the same time and place.

William Pemberton, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

I know of sales made by Mr. Kimberly to steamer Lulu. I delivered the goods on board the steamer. I am wagoner for Mr. Kimberly.

WILLIAM his × mark. PEMBERTON.

Depositions of James A. Skinner, Wm. Skinner, Samuel H. Daneker, John E. Mills, William H. Forsyth, witnesses on the part of the appellees, taken before Robert Lyon Rogers, U. S. commissioner for the Maryland district, at the city of Baltimore, on the 26th October, 1867.

James A. Skinner, being by me first carefully examined and cautioned and duly sworn according to law to testify the whole truth, and being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

113 As far as the items of the account annexed to the libel filed in said case against the steamer Lulu, they are all correct. Skinner & Forsyth furnished the material, and had the work done at their ship-yard in this city. The prices charged in their account for the work done are such as is customary to charge for such work, and I think the work done was necessary and proper to fit the ship for her duties. The master of the vessel, Captain Childs, ordered the work to be done. I sent my foreman and brother, William Skinner, to superintend the work and see that it was properly done. The work was done upon the credit of the vessel and owners. I think there has been nothing paid on the account.

Examination in chief closed.

Being cross-examined by the proctor for the claimant, the witness deposes and says as follows:

Prior to the bill in contest we did a small bill of work on the Lulu. We got paid for this previous work by David F. Keeling. Captain Childs approved the bill, and David F. Keeling, the agent of the boat, paid them. I cannot remember when the bill against the Lulu was made. Our books will have to show that.

× question No. 1. Produce your books, and file a copy of your accounts with the Lulu from the commencement of your transactions with her down to the time when the bill filed in this cause commences.

Answer. I will have the books brought up here to-morrow. I have not them with me.

The Lulu traded between the ports of Baltimore and Charleston, South Carolina. To the best of my knowledge and belief, she commenced running on that line in April, 1866, and continued run-
114 ning down to February, 1867, when she ceased.

Cross-ex. closed.

Re-examined by proctor for libellant:

I did not know the owners of the steamer Lulu when this bill was made, and I do not know them yet.

JAS. A. SKINNER.

William Skinner, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

I was foreman for Skinner & Forsyth at the time the work charged in the bill of Skinner & Forsyth, filed in this case, on the steamer Lulu was done. I superintended the doing of the work, kept the time of the hands, and gave it in to Mr. Forsyth every night, to be entered on the books of Skinner & Forsyth; and I also got the bills for the worked signed, as approved by Captain Childs, the master of the Lulu, when the work was done. The ship's smith work and ship-joiners' work were procured to be done by Skinner & Forsyth, at the request of the said Childs, master of the steamer. William Forsyth was the book-keeper of Skinner & Forsyth at the time the work was done on the steamer Lulu. I also returned to him an account of the materiel furnished.

WILLIAM SKINNER.

Samuel H. Daneker, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and

being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

115 I did part of the ship-smiths' work charged in the bill filed in this cause. I mean that my brother and myself, being the firm of Charles W. Daneker & Bro., did the ship-smiths' work charged in the bill. We did it at the instance and request of William Skinner, the foreman of Skinner and Forsyth. We look to Skinner & Forsyth for our pay. We did the work for them, and rendered the bill to them. The prices charged for the work were fair & reasonable.

SAM'L H. DANEKER.

John E. Mills, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

I did all the joiners' work charged in the bill filed and annexed to the libel in this case. I did the work at the instance and request of Skinner & Forsyth. I look to Skinner & Forsyth for my pay. The prices charged were the customary prices for such work.

JOHN C. MILLS.

William H. Forsyth, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

I am a member of the firm of Skinner & Forsyth. I kept the books of Skinner & Forsyth at the time the work was done on the steamer Lulu by said firm. I made out the bill filed with the libel in this case, for said work, from the books of Skinner & Forsyth. To the best
116 of my knowledge and belief, the account is just and correct, and the items of charge in said account are fair and reasonable, and such as are usual and customary. I entered the time made by the men engaged on this work, and the material furnished, as the same were reported to me by Mr. William Skinner, who was the foreman of Skinner and Forsyth. The credit for the work done was given to the vessel and owners. I did not know the owners at the time the work was done. We would not have done the work except upon the credit of the vessel. No part of the bill has been made to my knowledge.

Examination in chief closed.

Being cross-examined by the proctor for the claimants, the witness deposes and says as follows:

Cross-inter. No. 1. You have just handed me a paper marked S. & F., No. 1, purporting to be a transcript, or, rather, an account, of the transactions of your firm with the steamer Lulu.

The proctor for the claimant here waived the cross examination for the present, and, at the requst of the proctors of the respective parties, I adjourned the examination of the witness until Tuesday morning next, 29 of October, at nine o'clock, a. m. Met pursuant to adjournment; and, at the request of the proctors of the respective parties, adjourned to Tuesday, 5th of November, A. D. 1867, at nine o'clock a. m.

Met pursuant to adjournment; whereupon the proctor for defendants claimants proceeded with the cross-examination of the witness as follows:

Cross-in. No. 1. Please file a copy of your accounts with the
117 steamer Lulu from the commencement of your dealing with that vessel down to the date of the bill filed with the libel in this cause.

Answer. I herewith file a true copy of the accounts with said vessel, which accounts are marked, respectively, S. F., Nos. 1, 2, 3, 4, & 5, down to the time of the bill filed with the libel in this cause.

Cross-inter. No. 2. I observe that all the five accounts, as filed by you, have been paid; who was the person who paid them?

Answer. Mr. D. F. Keeling.

Cross-inter. No. 3. Who is Mr. Keeling? Has he a place of business in Baltimore?

Answer. As far as I know, he was the agent for the steamer "Lulu." His place of business is on Pratt street, in the city of Baltimore, near Smith's dock, and I have understood that his business is that of general agent for steamboats.

Cross-ex. No. 4. How long has his place of business been there?

Answer. I think he commenced there in eighteen hundred and sixty-six.

Cross-q. No. 5. Is his place of business still there?

Answer. My impression is that it is, but I have not been there for some six months.

Cross-q. No. 6. Was the bill filed in this case, on which the proceedings are instituted, presented to Keeling for payment before the libel was filed?

Answer. It was.

Cross-q. No. 7. How often?

Answer. The bill was presented and left there, and we went
118 not less than three times for the money before the libel in this case was filed.

Cross-examination here closed.

Being re-examined by the proctor for the libellants, the witness deposes and says as follows:

Question No. 1. I perceive that the name of Mr. Keeling is on the bills you filed in your examination by the proctor for the claimants, marked S. F., No. 1, 2, 3, 4, & 5. Be good enough to explain why this name appears on your books in this connection.

Answer. His name so appears as the person to whom the bills were to be presented for payment.

Question No. 2. Was or not Mr. Keeling, then, represented to you as simply the agent for said vessel?

(Question objected to by proctor for claimants.)

Answer. He was.

(Answer objected to by proctor for claimants.)

Question No. 3. Why did you present bills for work done on the steamer Lulu to Mr. Keeling?

Answer. At the request of the captain the bills were sent to Mr. Keeling, who was acting as agent for the vessel.

Examination of the witness here closed.

WM. H. FORSYTH.

S. F., No. 1.—(See deposition of William H. Forsyth.) Steamer Lulu & owners, D. F. Keeling, to Skinner & Forsyth,

1866.		Dr.
June 20.	1 day's carpenter, 3 50; 15 feet plank, 7	4 55
21.	1¼ day's carpenter, 3 50; 15 feet plank, 7	5 42

		4 lb. spikes, 15; lead, 3 00; tar, 1 00	4 60
119		1½ day's caulking, 3 50; 15 lb. cotton, 50	12 75
	22.	2½ days' caulking, 3 50; 4 lb. cotton, 50	10 75
		15 lb. lead, 25; 1 gal. oil, 1 50; tar, 50	5 75
		1 seam brush, 1 00; felt, 7 50	8 50
		112 feet plank, 7; 6 lb. gal. nails, 25	9 34
	23.	3 days' carpenter, 3 50; ¼ day's caulking, 3 50; 3 lb. okum, 16	11 85
		Paid July 30th, 1866	73 51

S. F., No. 2.—Steamer Lulu & own's, Keeling, to Skinner & Forsyth,

1866.			Dr.
Aug't	17.	2 days' carpenter, 3 50; 420 feet plank, 7	36 40
	18.	4 days' carpenter, 3 50	14 00
	20.	3 days' carpenter, 3 50; 120 feet plank, 7	18 90
		25 lb. bolts, 10; 7 lb. spikes, 15	3 55
		Blacksmith's bill	23 25
		Paid Oct. 27th, 1866	96 10

S. F., No. 3.—Steamer Lulu & owners, D. F. Keeling, to Skinner & Forsyth,

1866.			Dr.
Oct.	15.	1 day's carpenter, 3 50	3 50
		15 feet plank, 7	1 05
	16.	1½ day's carpenter, 3 50; 60 feet plank, 7	9 45
	17.	2 days' carpenter, 3 50; 6 lb. spikes, 15; 8 lb. bolts, 10	8 70
	18.	2½ days' carpenter, 3 50	8 75
	19.	2 days' carpenter, 3 50; 36 feet timber, 5	8 80
		4 lb. spikes, 15; ½ day's caulking, 3 50; 12 lb. okum, 16.	4 27
120	20.	2 days' carpenter, 3 50	7 00
		Paid Oct. 27th, 1866	51 52

S. F., No. 4.—Steamer Lulu & own., Keeling, to Skinner & Forsyth,

1866.			Dr.
Nov.	12.	2 days' caulking, 3 50; 13 lb. okum, 16; 3 gals. pitch, 75.	11 33
	14.	1 day's caulking, 3 50; 4 gals. pitch, 75	6 50
		Paid Dec. 4th, 1866	17 83

S. F., No. 5.—Steamer Lulu & own's, Keeling, to Skinner & Forsyth,

1866.			Dr.
Nov.	26.	2½ days' carpenter, 3 50; 6 lb. nails, 20	9 95
	27.	2½ days' carpenter, 3 50	8 75
		1 day's caulking, 3 50; 15 lb. okum, 16	5 90
			24 60
		Blacksmith's bill	40 00
		Paid Dec. 4th, 1866	64 60

Depositions of William P. Williamson, Henry G. Carey, Washington Kelly, Edwin Bailey, John T. Johnson, William H. Abrahams, James C. Sellman, Washington Burnett, James Boyce, James R. Tarleton,

Alfred Poor, John T. Johnson, Byron H. Holmes, witnesses for appellees, taken before the same commissioner, at the same place, on the 22d November, 1867.

William P. Williamson, being by me first carefully examined
121 and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appelles, makes oath, deposeth, and saith as follows, to wit:

I was engineer and general superintendant at the Vulcan Works, in the employ of Hazlehurst & Co., from January, A. D. 1866, to the first of May, A. D. 1867. The firm of Hazlehurst & Co. was constituted by Henry R. Hazlehurst and William D. Weigand. They were marine engineers and machinests. I knew the steamer Lulu, which, I believe, was owned in New York. She did not belong to the port of Baltimore. I had her repeatedly repaired whilst in the port of Baltimore, upon the several requests of her captain and engineer, and whilst I was in the employ of Hazlehurst & Co. Such repairs were put upon her at the Vulcan Works of Hazlehurst & Co., and were essentially necessary for the use and navigation of the steamer, and indispensable for her going to sea. They were done on the faith and credit of the ship solely, she having no known owner in the district of Maryland.

I have inspected the bills filed with the libel of Hazlehurst & Co. in this case, marked H., Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, & 10. They are for the repairs to which I have testified, made by Hazlehurt & Co. on the steamer Lulu. The prices charged for the same were fair and reasonable, as charged in said bills; and the same were repeatedly exhibited to the captain and engineer of the Lulu, and by both of them approved as correct. I know, as an engineer, that the repairs so made in the steamer were indispensably necessary, and the owners were
122 wholly unknown to me, or to the libellants, and the credit was wholly given to the lien on said ship for such repairs. The balance of twenty-six hundred and three dollars and thirty-five cents, as shown by bill H., No. 1, is wholly due and unpaid, and the libellants have no security or satisfaction therefor.

WM. P. WILLIAMSON.

Henry G. Carey, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

I was in the employment of the libellants, Henry R. Hazlehurst and William D. Weigand, partners, trading as Hazlehurst and Co., from January, A. D. 1866, to the first of March, A. D, 1867, and continued in their employ to the first of May, A. D. 1867. I was acting for them as book-keeper and clerk. I knew the steamer Lulu, which, I believe, was owned in New York. She did not belong to the port of Baltimore. I have inspected and examined the bill of Hazlehurst & Co., now in my hands, filed with their libel in this case, marked H., Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. These bills are all in my handwriting, and are for work done on the steamer Lulu, by order of her captain and engineer. The prices charged in said bills are the usual prices for such work, and are fair and reasonable. They were all necessary for the navigation of the steamer, and fitting her for sea. As the steamer did not belong to this port, the firm of Hazlehurst & Co. looked to the lien on the vessel for their pay for the work so done, and the same was done on the faith and

credit of the ship. The bill marked H., No. 1, is an epitome of
123 all the bills, showing the amount of repairs so done to said steamer to be four thousand two hundred and three dollars and thirty-five cents, on which the sum of sixteen hundred dollars was paid, and that the balance is wholly due and unpaid, and the libellants have no security or satisfaction therefor. The business of said libellants was that of marine engineers and machinists.

HENRY G. CAREY.

Washington Kelly, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

I am in the employment of George H. Coleman and Edwin Bailey, ship-chandlers, doing business as Coleman & Bailey, in the capacity of book-keeper and general superintendent of matters in their office, and have been so engaged for twelve years. My duty is to receive and fulfil orders on their establishment for articles needed by vessels, and such has been my duty for twelve years. I know the steamer Lulu, and know that, at the time the articles charged to her in the schedule, marked Exhibit A, filed with the libel of said Coleman & Bailey in this case, were furnished to said steamer that said steamer did not belong to the port of Baltimore, nor to owners residing within the State of Maryland. Said exhibit is made out in my handwriting, and I know that all the articles therein charged were ordered by Daniel C. Childs, master of the steamer Lulu at the time the same were so ordered. I know that they
were necessary to enable the steamer to go to sea, and that they
124 were sold and delivered on board of her at the prices charged in said exhibit, and that said prices were, at the time, reasonable and proper. The said articles were sold on the credit of said steamer, and could not have been procured otherwise than on her credit. Her master and owners had no credit in this city to my knowledge; at all events, Coleman & Bailey would not have sold anything on their credit. None of said articles have been paid for, and all of said bill is due by said steamer. I have seen Captain Childs write, and am familiar with his handwriting. His name signed to said bill is in his handwriting, and were signed by him to attest their correctness. Two of the bills are not signed by him; one of them is a duplicate of a bill which had been signed by him, but was mislaid; the other was not signed by him, because I had not time to get his signature before the steamer sailed, after the articles were delivered, but the articles in those two, as well as in the others, were ordered by him for the use of the steamer. All the articles charged in said bills were sent by me from the store of Coleman & Bailey for the use of said steamer.

WASHINGTON KELLY.

Edwin Bailey, a competent witness produced on behalf of the appellees, being first by me duly cautioned and sworn to testify the whole truth, makes oath, deposeth, and saith:

I am a member of the firm of Coleman & Bailey, ship-chandlers, doing business in the city of Baltimore. I have examined the schedule marked Exhibit A, filed with the libel of said Coleman & Bailey in this
case. It is a correct account of supplies furnished by said firm
125 to the steamship Lulu, and of the prices at which they were furnished, which prices were reasonable and proper therefor; said supplies were necessary to enable said steamer to prosecute her voyage,

and were sold upon the order of Captain Childs, her master. The were sold upon the credit of said steamer and her owners, and would not have been sold otherwise than upon the credit of the steamer. The owners of said steamer did not reside in Maryland, nor did she belong to any port in this State, and her owners and master had not, so far as I know, or have been able to ascertain, any credit in the city of Baltimore. Before these bills were contracted, Coleman & Bailey sold other articles for the same steamer, which were paid for by Mr. Keeling; but he said, when paying them, that said steamer owed him largely, and that he would pay no more bills on her account. His credit or responsibility was not in any degree relied on for these bills, and I knew then, and know now, of no way in which these could have been contracted for said steamer, or the articles therein charged procured for her, otherwise than upon the credit of the steamer.

EDWIN BAILEY.

John T. Johnson, a competent witness produced on behalf of the appellees, being first by me duly cautioned and sworn to testify the whole truth, makes oath, deposeth, and saith as follows:

I was clerk of D. F. Keeling during the whole time embraced in the account of Coleman & Bailey, filed with their libel against the
126 steamer Lulu in this case. Mr. Keeling had acted as agent of the steamer, but had never allowed any bills to be contracted on his credit, but had sometimes advanced money to pay them after they had been contracted. At the time the bills of Coleman & Bailey, said steamer was largely in debt to Mr. Keeling, and he was unwilling to advance any more on her account. The articles charged in the bills of Coleman & Bailey could not, in my opinion, have been procured otherwise than upon the credit of the steamer. Neither Mr. Keeling nor any one else that I know of in Baltimore, would then have trusted her owners or the master of said steamer for the amount of said bills, or either of them.

J. T. JOHNSON.

William H. Abrahams, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

I am a member of the firm of J. J. Abrahams & Son, ship-builders and owners of the screw-dock, doing business in the city of Baltimore. The firm consists of John J. Abrahams and myself. I knew the steamer Lulu, and know that she did not belong to the port of Baltimore. I have inspected the bill of items filed with the libel of J. J. Abrahams & Son in the case, marked R No. 1, and have the same now in my hand. The work therein charged was done on the steamship Lulu at the instance of her master, and the same was indispensable to enable the steamer to go to sea, and the prices charged for the said work in said bill are the customary prices for such work, and are fair and reason-
127 able as therein charged. The said work was done solely on the credit of said vessel, at the request of her master, she having no owner or owners known to myself or to the firm of Abrahams & Son, in the district of Maryland. The repairs on this vessel could not have been made without the use of the screw dock, and the charge for the use of it in said bill is a fair, reasonable, and proper charge. The firm of Abrahams & Son would not have done the work on the steamer Lulu upon the credit of persons whom I am now informed are the owners.

WM. H. ABRAHAMS.

James C. Sellman, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

In February, 1867, I was book-keeper in the house of R. G. Rieman & Co., of Baltimore City. I have examined the account filed with the libel of R. G. Rieman & Co. in this case; the same is in my handwriting, and is a transcript from the books of said firm. Our invariable custom in selling coal to these steamships, to sell it on the credit of the ship; and in this case of sale to the steamer Lulu, the credit was given to her solely. The prices charged in said bill are fair market prices for therein charged, and the coal so furnished the Lulu was indispensable to enable her to go to sea.

JAS. C. SELLMAN.

Washington Burnett, a competent witness produced on behalf of the appellees, being first by me duly cautioned and sworn, makes
128 oath, deposeth, and saith as follows:

I was shipping-clerk of coal for R. G. Rieman & Co., in February, A. D. 1867, at their yard, City Block. I know that there one hundred tons of coal delivered to said steamer by said firm on the 2nd February, 1867, and one hundred tons on the 18th and 19th of February. I loaded the coal on scows, and, by order of Captain Childs, sent men with it to pass it over the side of the vessel and trim it.

WASHINGTON BURNET.

James Boyce, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

I know the steamship Lulu, and know that she did not belong to the port of Baltimore. I have inspected the bill filed with the libel of James Boyce, myself, in this cause, marked L No. 1, and I know that the coal in said bill charged was delivered to said steamer for her use, at the instance of her master, and was supplied to said steamer solely upon her credit. I knew of no owner or owners that she had in the district of Maryland. I know that the prices charged for coal in said bill are fair and reasonable as therein charged. The master of the steamer is Daniel C. Childs, or was at the time this coal was furnished to her, and his name appears upon said bill as approving the same. I know that this coal was necessary, indeed, indispensable, for the vessel, to enable her to
proceed to sea, as she was a steam vessel. The responsibility of
129 the owners of this vessel was entirely unknown to me; and as to the credit of her master, I knew nothing as to the credit of her master; the coal was furnished solely upon the credit of the vessel.

JAMES BOYCE.

Exhibit L No. 1.

BALTIMORE, *January*, 1867.

M. Steamer Lulu & owners to James Boyce, Dr., miner and shipper of coal, 30 Second street.

1866.

August 31. For 50 c. per ton on 94 tons coal furnished
" steamer Lulu by Mordecai & Co..... $ 47

October 23.	75 tons No. 1 W. A. coal, (un. d'k,) $7 50..	562 50	
"	Loading	26 25	
			588 75
November 26.	80 tons st'bt coal, Lo. Pt., $7 50.....	600 00	
"	Scowing & trimming.....	60 00	
			660
December 10.	80 tons st'bt coal, Lo. Pt., $7 50.....	600 00	
"	Scowing & trimming.....	60 00	
			660
	Average date, Nov'r 19th, 1866.....		1,955 75

Approved:

DANIEL C. CHILDS.

James R. Tarleton, a competent witness being produced before me and duly cautioned and sworn, on behalf of the appellees, deposeth, makes oath, and saith as follows:

I have examined the bill marked Exhibit L No. 2, filed with the libel of James Boyce in this case. I have seen Daniel C. Childs, the master of the steamer Lulu, write repeatedly, and the signature appended
130 to said bill is his; and the signature of Daniel C. Childs appended to the bill filed with the libel of Coleman & Bailey in this case is in the handwriting of the said Childs. I was clerk to David F. Keeling, the agent of the Lulu, and I know that whenever coal was ordered for steamer Lulu, it was necessary to enable her to go to sea. I have examined papers marked O No. 1, shown me, and I recognize the signature of Daniel C. Childs thereon as in the handwriting of the said Childs. I allude to the paper filed in connection with the claim of R. G. Rieman & Co.

JAMES R. TARLETON.

Alfred Poor, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

I am a member of the firm of R. G. Rieman & Co., of the city of Baltimore, coal merchants. I am familiar with the account of said Rieman & Co., filed with their libel against the steamer Lulu in this case. I received the orders for the coal charged in said bill, and delivered by said Rieman & Co. to said steamer, from her master, Daniel C. Childs. The firm knew nothing of the owners of said vessel when the coal was sold and delivered. It was sold and delivered exclusively on the credit of the vessel. Had the firm known the owners of the vessel, either in this port or elsewhere, the coal would not have been sold upon any other terms than upon the credit of the vessel, as it was our unvarying custom to sell on such terms, except in case of special contract. The
131 coal delivered to said steamer by Rieman & Co. was necessary to enable the vessel to proceed on her intended voyage, and the prices charged were the current market rates.

ALFRED POOR.

John T. Johnson, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

I was in the employ of D. F. Keeling, agent for the steamer Lulu, as clerk, in and about the month of February, A. D. 1867. I know that Daniel C. Childs was the captain of the steamer Lulu, and that John E. Smith was mate of said vessel. I have inspected certain papers marked O Nos. 1, 2, 3, and 4, accounts of coal delivered to the steamer Lulu by R. G. Rieman & Co., and I know that the signatures of said Childs and Smith on said papers are in the proper handwriting of the said Smith and Childs. I am familiar with their handwriting.

J. T. JOHNSON.

O No. 1.

BALTIMORE, *Feb.* 18*th*, 1867.

Delivered on board of scow No. 10, for steamship Lulu, fifty tons of No. 1 hard coal, (50) tons.

R. G. RIEMAN & CO.,
Per WASHINGTON BURNETT.

Approved:

DANIEL C. CHILDS.

O No. 2.

BALTIMORE, *Feb.* 19*th*, 1867.

Delivered on board of scow No. , for steamship Lulu, fifty tons 132 of No. 1 hard coal, (50) tons.

R. G. RIEMAN & CO.,
Per WASHINGTON BURNETT.

(Written across:) John E. Smith.

O No 3.

BALTIMORE, *Feb.* 2 *th*, 1867.

Delivered on board of scow No. 23, for steamship Lulu, fifty tons of No. 1 hard coal, (50) tons.

R. G. RIEMAN & CO.,
Per WASHINGTON BURNETT.

(Written across:) John E. Smith.

O No 4.

BALTIMORE, *Feb.* 2 *th*, 1867.

Delivered on board of scow No. 24, for steamship Lulu, fifty tons of No. 1 hard coal, (50) tons.

R. G. RIEMAN & CO.,
Per WASHINGTON BURNETT.

(Written across:) John E. Smith.

Byron H. Holmes, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

The firm of R. S. Holmes & Sons is composed of Emily Holmes and myself. We keep a steamship supply-store, and do business at 72 West Pratt st., Baltimore. I have inspected the bill of items filed with the libel of R. S. Holmes & Sons in the case against the steamer Lulu, and the articles therein charged were furnished on the dates as therein charged to the said steamer. The prices charged are the market prices for said articles at their said dates, and are fair and reasonable. These articles were

necessary to enable the ship to go to sea, and they were furnished
133 solely on the credit of the ship. We did not know the owners of the ship. The ship herself did not belong to any port in the State of Maryland, and she had no owner or owners within the State of Maryland, as I know of. I would not have furnished the articles charged in our bill against the steamer Lulu upon the credit of the persons whom I now understand are the owners. The amount due and owing by said steamer on our bill is six hundred and twenty-four dollars and twenty-seven cents. I had a conversation with Daniel C. Childs, the master of the Lulu, and he admitted the correctness of our bill filed with the libel in this case.

B. H. HOLMES.

Deposition of Washington Kelly (cross-examination), a witness for appellees, taken before the same commissioner, at the same place, on the 18th January, 1868.

Washington Kelly, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being recalled for cross-examination by the appellants, makes oath, deposeth, and saith as follows, to wit:

Cross-int. No. 1. Did Messrs. Coleman and Bailey have any transactions with the steamer Lulu prior to November, 1866? If yea, state what those dealings were.

Answer. Their first account with the Lulu, charged on the books of Coleman & Bailey to said steamer, commenced July 17, 1866, and extended to August 3rd, A. D. 1866, and amounted to two hundred and twenty-seven dollars and sixty-seven cents. The account is headed
134 on the books of Coleman & Bailey, thus: "Steamship Lulu, Captain D. Childs, 1866, D. F. Keeling, ag't Baltimore, Md." That account was paid December 13, 1866. I am mistaken—there were previous dealings with the Lulu, which I will proceed to detail. There were several previous bills, one of which bills is previous to July 1st, 1866, being for $337\frac{00}{100}$ (?), which was paid in full on the 19th of July, 1866, and the first item in this bill is 20 June, A. D. 1866, and the last item, 23 June, 1866. The next bill commences and ends the 7th of July of the same year, and was paid 23 August, 1866. The next bill commences and ends August 21st, 1866, and was paid September 24, A. D. 1866, to the amount of $\$170\frac{76}{100}$. The next bill commences 26 of August, 1866, and ends 7 September, to the amount of $\$180\frac{52}{100}$, and was paid 15 of December of that year. The next bill commences and ends 26 of September, 1866, and was paid 15 December, 1866, for $\$107\frac{00}{100}$ (?). The next bill commences 11 of Octobor, 1866, and ends 25 of same month, to the amount of $\$210\frac{90}{100}$, and was paid on the 14 of December. The next bill commences 27 of October, 1866, and ends 13 of November, 1866, for $\$263\frac{79}{100}$, and was paid 13 December, 1866, and this was the last bill that was ever paid.

Cross-int. No. 2. Designate how each of the accounts of which you have spoken appears to be headed on the ship-book of Messrs. Coleman & Bailey now before you.

Answer. The bill of 20 to 23 of June, is headed "Steamship Lulu, Captain D. Childs," with a memorandum underneath of "D. Keeling, agt." I give a fac-simile from said book, as near as I can make one, and I hand it to the commissioner with the request that he will append it to my answer.

135 Steamship Lulu. Capt. D. Childs.
D. Keeling, Agent.

The name of D. Keeling, agent, does not appear on some of the unpaid bills, nor does it appear on some of the paid bills.

Inter. No. 3. Do you know whether any of the unpaid bills were presented to Mr. Keeling for payment? If yea, state which of them, and how often they were so presented.

Answer. When the goods would be delivered the bill would be sent with them to Captain Childs, and to the best of my knowledge he would leave them at Mr. Keeling's.

Inter. No. 4. Please state whether you, or any one from the establishment of Messrs. Coleman & Bailey, called on Mr. Keeling for payment of said bills?

Answer. None of the unpaid bills were presented to Mr. Keeling for payment; no one from the establishment of Coleman & Bailey called on Mr. Keeling for the payment of these bills.

Int. No. 5. From whom was payment received of such bills as were paid?

Answer. From Mr. John T. Johnson, who was clerk of Mr. Keeling.

Int. No. 6. Where were the bills paid?

Answer. At the place of business of Coleman & Bailey.

Int. No. 7. Were any of the bills that were paid presented for payment to Mr. Keeling by any one from your establishment?

Answer. Not to my knowledge.

Int. No. 8. Could they have been so presented without your knowledge?

136 Answer. No, sir

Int. No. 9. Do I understand you to say that neither the paid nor unpaid bills were presented to Mr. Keeling for payment; nor that Mr. Keeling was never called upon to pay them or either of them?

Answer. To the best of my knowledge & belief they were neither presented to him nor was he called upon to pay them by any one from our establishment.

Int. No. 10. Between what ports did the Lulu ply during the time you were furnishing her supplies?

Answer. Between Baltimore and Charleston, South Carolina.

Cross-ex. here closed.

Being re-examined by the proctor for the appellees, Coleman & Bailey, the witness deposeth and saith as follows:

Int. No. 1. Were the accounts of which you have spoken in your cross-examination transferred from the ship-book to any other book? If yea, to what book were they so transferred, and when were they so transferred, and what is the heading on the book to which they were transferred?

Answer. They were transferred to the ledger a few days, according to our custom, after the entry on the ship-book. The heading of the ledger is "Steamship Lulu," and on the same page is the debit and credit account.

Re-ex. closed.

WASHINGTON KELLY.

Sworn to and subscribed before me this 18 Jan'y, 1868.

ROBT. LYON ROGERS,
U. S. Com'sr.

137 Deposition of William P. Williamson (cross-examination), a witness for appellees, taken before the same commissioner, at the same place, on the 25th February, 1868.

William P. Williamson, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being cross-examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

I am at present one of the firm of Hazlehurst & Co., and at the time of the contracting of the bill in question I was acting as the attorney in fact of Mr. Hazlehurst, who was in Europe. A small portion of this bill was contracted after I became a member the firm. I became a member of the firm on the 1st of February, A. D. 1867. The firm does it work for cash; this is our general rule. I have nothing to do with the money affairs of the concern. I cannot explain the bill of items filed by the firm in this cause, or any of them. I have frequently called on Keeling, the agent of the line, for money on the bill, and found him particularly slow in paying. He would frequently promise me one thousand dollars, and then, during a week, or the course of a week, would send a check for five hundred. I have called on him some four or five times in reference to this bill, and have frequently called on him with reference to other matters of business of the firm with him, and on such occasions would take occasion to remind him that he was slow in making payments. It is not my business to collect the bills of the firm. The
138 credits amounting in the whole to sixteen hundred dollars on the bill of Hazlehurst & Co., filed in this cause with the libel in the cause and marked H., No. 1, were paid by Keeling. My understanding was, that the steamer Lulu was plying between the ports of Baltimore and Charleston at the time the bill in question was contracted, and I am certain she was so running some time before we made repairs upon her.

WILLIAM P. WILLIAMSON.

Subscribed and sworn to this 25 February, A. D. 1868, before me.

ROBT. LYON ROGERS,
U. S. Com'sr.

Deposition of Alfred Poor (cross-examination), a witness on the part of the appellees, taken before the same commissioner, at the same place, on the 2d March, 1868.

Alfred Poor, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being cross-examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

I am a partner of Robert G. Rieman. The dealings of our house commenced with the steamer Lulu in February, A. D. 1867. The only transactions that we had with the steamer Lulu were supplying to her one hundred tons of coal on the 2nd of February, 1867, and one hundred tons on the 18th of February. The first lot of one hundred tons, I think, was delivered on the 2nd of February, in two scow loads of fifty tons each, and the second lot of one hundred tons was ordered on the 18th, and, I think, the delivery completed on the 19th of February. No payments whatever has been made. We called on the captain of the ship, and
139 called also on Mr. Keeling, the agent of the ship, to know when we should collect the bills. The captain told us to call on Mr. Keeling; that was his head-quarters. We asked Mr. Keeling if the Lulu had left any money with him to pay our bills, and he said she had not. The captain told us that the money would be left with Keeling, and we called on him to get it. I can't say how many times we called on Mr. Keeling, but I think three or four times before we took action. We did

not call on him to pay the money, but called to see if money had been left in his hands for us. I knew she had been running on the route from Baltimore to Charleston, from seeing advertisements in the papers of her arrivals and departure, and presume I saw the advertisement of her first trip, but I do not recollect the date.

Question. Please state how long, to the best of your knowledge and belief, the Lulu had been running on said route prior to the purchase of the first bill of coal from you.

Answer. I have no means of answering that question. I have no data upon which to fix the time, but I would say six months, more or less.

ALFRED POOR.

Subscribed and sworn to before me this 2 March, A. D. 1868.

ROBT. LYON ROGERS,
U. S. Com'r.

Deposition of James Boyce (cross-examination), a witness on the part of the appellees, taken before the same commissioner, at the same place, on the 7th March, 1868.

140 James Boyce, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being cross-examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

(The proctor for the claimant here called upon the proctor for the libellant to produce his books showing all transactions of said libellant with the steamer Lulu, whereupon a certain book marked day-book is handed to the proctor for the claimants.)

Question. Please turn to the entry of the first transaction you had with the steamer Lulu.

Answer. I don't think I can do that, for the first transaction with the steamer Lulu was for cash, and, not having an index to this book, I cannot find it. Upon a more careful examination of my book, I find that the first transaction with the steamer is the first item charged in the account filed with the libel in this case, and dated 31st of August, A. D. 1866.

Question. I understand you to say that you never received, up to the 31st of August, 1866, anything for or on account of any coal you may have furnished the steamer Lulu?

Answer. On examining my books carefully I can find no charges against or credits to the steamer up to that date.

Question. What are the terms on which you were selling coal in 1866—cash or credit?

Answer. We usually sold for cash, and invariably for cash to steamers.

Question. Did you ever present these accounts to any one for payment—the accounts against the Lulu—and, if so, to whom?

141 Answer. My collector generally presented them to the captain of the vessel or the agent of the steamer. I can't tell to which they were presented in this case.

Question. Who was the agent to whom they were presented?

Answer. My impression is that Mr. Keeling sometimes paid her bills; in fact, I know he did some bills.

Question. Did you ever give directions to your collector or any one else to present your bills against the Lulu to Mr. Keeling?

Answer. That I can't positively say where I sent them. I usually sent to the captain of the vessel, and the collector went where the cap-

tain sent him. I know he went to Keeling, and was sent by me. What I mean to convey is, that I can't tell how I came to send him to Keeling, but I presume it was by orders of the captain, under whose orders we always acted.

Question. How long had you known the steamer Lulu prior to August, 1866?

Answer. I do not recollect to have known her at all prior to my transactions with her.

Question. Who made application to you for the purchase of coal furnished the Lulu?

Answer. It was either Captain Childs, of the steamer, or some one sent by him.

Question. Did or not Mr. Keeling ever call and see you on the subject of the sale of coal to the Lulu? If yea, state when and how often.

Answer. He did, but I can't tell you when or how often.

142 Question. State your conversations upon the subject with Mr. Keeling as well as you can remember them.

Answer. I can't remember the conversations.

Question. State the subject of the conversations.

Answer. Mr. Keeling gave me to understand that the captain of the steamer ordered his own coal, and he came merely to ascertain if I could furnish it in case the captain did so order it. This substantially what took place between us; I can't give the exact works spoken.

Question. Was that always the subject or substance of your conversations with Mr. Keeling in your interviews with him touching the matters enquired of you?

Answer. I don't remember anything but the one leading point I have already expressed. I do not remember having any other conversation with Mr. Keeling other than I have already stated.

Question. Do I understand you to say that every time Mr. Keeling called to see you he called to ask if you could furnish the captain of the Lulu coal, and that that alone constituted the subject of your conversations?

Answer. I have already said that I could not recollect the entire conversations I had with Mr. Keeling, but have stated as far as I can remember. We might have conversed on other subjects, but I do not now remember.

Question. Did you have any personal interview or interviews with Captain Childs, the master of the Lulu?

Answer. I had some talk with Captain Childs, but I do not recollect the particulars of the conversation?

Question. Did you have more than one interview with him?

143 Answer. I presume I had; but as to that I can't recollect. [As I understood, the captain had been to my office for coal for the Lulu before I ever had an interview with him.]

(So much of the answer of the witness as is in brackets is objected to by the proctor for the claimants as not being responsive to his question, and as being hearsay.)

Question. Between what ports was the Lulu plying at the time you were furnishing her with coal?

Answer. Between Baltimore and some of the southern ports; I think Charleston.

Question. Inasmuch as your terms, as already stated, were for cash, please explain why you furnished your bills covering a period from August 31, A. D. 1866, to December 10, 1866?

Answer. It was done under promises that they would pay from time to time, which they failed to do.

Question. You say they promised to pay; whom do you mean by they?

Answer. I mean the captain or the gent authorized to settle the bills of the vessel.

Question. Who do you mean by the agent authorized to settle the bills of the vessel?

Answer. Mr Keeling is the only authorized agent that I knew of who was authorized by the master of the vessel to act as agent.

JAMES BOYCE.

Subscribed and sworn to before me this 7th day of March, A. D. 1868.

ROBT. LYON ROGERS,
U. S. Com'r.

144 Deposition of William H. Abrahams (cross-examination), on the part of appellees, taken before the same commissioner, at the same place, on the 28th March, 1868.

William H. Abrahams, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being cross-examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

Question. Did your firm have any transactions with the steamer Lulu prior to 1st January, 1867?

Answer. No.

Question. Were any repairs put on this vessel by your firm, or did you merely furnish the dockage?

Answer. We merely furnished the dockage.

Question. How long had you known the Lulu prior to the first of January, 1867, and where did you know her?

Answer. All I knew about her was that I saw her pass and repass our wharf. I cannot exactly state the time.

Question. Had you known her as many as two, three, four, or five months prior to the first of January?

Answer. I really cannot answer that question. I cannot tell.

Question. Between what ports did she ply, to the best of your knowledge and belief?

Answer. I do not know as a fact, but I understood she plied between Baltimore and Charleston.

Question. Who applied to you to put her on your dock?

Answer. Captain Childs, the master of the steamer.

Question. Did he inform you who the agent of the vessel was?

Answer. Not that I know of.

Question. Did you know who the agent of the vessel was?

145 Answer. David F. Keeling, I understood. It was advertised in his name.

Question. Did you ever present your bill to any one for payment, or cause it to be presented to any one; if so, to whom?

Answer. I am not positive about it, but I may have presented it to Keeling, and if I did it was at the request of Captain Childs.

Question. How often did you present it, or cause it to be presented, or claim payment of Keeling?

Answer. I am not positive that I ever did present it there.

Question. If it was not presented to Keeling, to whom was it presented?

Answer. I am not really positive of its having been presented to any one, except that Captain Childs came to the office and pronounced it to be correct.

Question. What are the terms on which you furnished dockage—cash or credit; and if credit, how long?

Answer. Our usual terms are cash.

Question. I understand, then, from your statement that, though your terms are cash and this vessel a foreign vessel, and although the captain pronounced your bill correct, yet you are unable to say you ever demanded payment of the bill. Please answer what reply you make to the preceding statement.

Answer. We expected from day to day that the captain would bring us the money for the bill. We are not usually hoggish about our bills.

(The proctor for the claimants here turns to the witness and requests the kindness to let him look at his books. Whereupon a book is
146 handed to the proctor. The proctor for the claimants then demands of him his day-book, and he replies that the book handed to the proctor is the only book kept by his firm petaining to the dockage of vessels. The witness says that his firm also carry on the business of ship-building, and have books pertaining to that business.)

Here the proctor for the libellants propounds to the witness the following questions:

Question. You have said in answer to a question already put to you, that you merely furnished the dockage. Please state what you mean by furnishing the dockage, what sort of a dock a screw-dock is, for what purpose used, how necessary it is to the making of repairs, and when it is necessary to make use of a screw-dock in order to make repairs?

Answer. I mean by furnishing dockage the furnishing a place to take a vessel out of the water with a view to an examination of her bottom. A screw-dock is intended to raise vessels out of water by means of screws. It is necessary to use such a dock when a vessel's bottom requires examination, and being raised out of water of course facilities are furnished for making repairs if found to be necessary. Access to the bottom cannot be had when a vessel is in the water.

Question. Was it for the purpose of examining the bottom of the Lulu and making repairs thereon that she was suspended by your screw-dock?

Answer. It was for the purpose of examining her bottom, but more particularly for the purpose of examining her propeller, which, when she was raised, was found to be out of order.

147 WM. H. ABRAHAMS.

Subscribed and sworn to before me this 28th March, A. D. 1868.
ROBT. LYON ROGERS, *U. S. Com'r.*

Deposition of William V. Clift, on the part of the appellees, taken before Isaac Brooks, jr., U. S. commissioner in and for the Maryland district, at the city of Baltimore, on the 24th June, 1868.

William V. Clift, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

My name is William V. Clift; I am twenty years of age, and reside in Baltimore. I am clerk for Samuel R. Waite. I know that repairs were made upon the steamer Lulu by Mr. Waite. I think they were put on

in the winter of 1867. The repairs consisted of an iron shoe on the bow to prevent ice from cutting. The value of the work done by Mr. Waite was thirty-five dollars and some odd cents. The repairs put on said vessel were necessary and proper. The price was about the same usually charged. I saw the captain in reference to the bill. I saw him at the steamer Lulu, and he said he would pay it. I then met him at Mr. Keeling's office, and he said that he would sign the bill, and that Mr. Keeling would pay it. It has never been paid. The repairs were charged on our books to the steamer Lulu.

Cross-examined:

148 1st cross-interrogatory. How do you know that these repairs were put on the Lulu?

Answer. I saw the work made in the shop. I know that the work was put on. I know that the work was put on by the acknowledgement of the captain of the Lulu.

WM. V. CLIFT.

Subscribed & sworn to before me this 24th day of June, 1868.

ISAAC BROOKS, JR.,
U. S. Commissioner.

Deposition of Edwin Bailey (cross-examination), a witness on the part of the appellants, taken before Robert Lyon Rogers, U. S. commissioner for Maryland district, at the city of Baltimore, on the 28th February, 1868.

Edwin Bailey, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being recalled for cross-examination on behalf of the appellants, makes oath, deposeth, and saith as follows:

Cross-ex. No. 1. Please state whether you, or any one on behalf of your firm, ever applied to Mr. Keeling for the payment of any of the accounts made with your firm by the steamship Lulu.

Answer. Not to my knowledge.

Cross-int. No. 2. I mean by question No. 1 as well the paid as the unpaid accounts?

Answer. Not to my knowledge.

Inter. No. 3. Did you ever demand or ask payment of the unpaid accounts from any one; if yea, from whom?

Answer. As to myself, I do not know that I ever did of any one, and I will give you the reason.

149 (The proctor for appellant objects to his giving the reason as not responsive to his question.)

Int. No. 4. Did any one on account of your firm ever demand payment of the unpaid bills from any one?

Answer. I think Mr. J. T. Johnson was asked if those bills would be paid; his answer was that Mr. D. F. Keeling would pay no more bills of the steamer Lulu; that we must look to the steamer and owners for the amount she was indebted to us. We then handed the papers to our attorneys, Wallis & Thomas.

Int. No. 5. Who had that conversation with Mr. Johnson?

Answer. It was Coleman & myself.

Int. No. 6. How long before the suit was brought did that conversation take place?

Answer. It could not have been long, as when we found we could not collect the amounts due we placed it in our attorneys' hands.

Int. No. 7. How did you find out that you could not collect those accounts, as you had never called on any one for payment?

Answer. Mr. John T. Johnson, who was clerk for Keeling, was at our place nearly every day, brought us the money for the paid bills, and told us for the unpaid bills Keeling would not pay, for the reason that the steamer Lulu and owners owed him, Keeling, a large amount of money.

Int. No. 8. Was this the conversation of which you have spoken that took place not long before the suit was brought?

Answer. It is the purport of that conversation; the exact words
150 I do not recollect. However, it was sufficient to induce us to put the matter in the hands of our attorneys.

Int. No. 9. Where were the bills paid that were paid, and by whom were they paid?

Answer. Mr. J. T. Johnson brought the bills to our store with the money, and our book-keeper receipted them.

Int. No. 10. Were they usually paid by check or in cash?

Answer. I do not know, as I never attend to the financial part of our establishment.

Int. No. 11. Who collects for your firm and who is your partner—financial partner?

Answer. Captain George A. Coleman.

Cross-ex. here closed.

Being re-examined by the proctor for the appellees, Coleman & Bailey, the witness deposeth and saith as follows:

Int. No. 1. Did you or your partner, or any one connected with your firm, so far as you know, ever consider Keeling responsible for any of the bills which this suit on your behalf was instituted to recover?

(Question objected to.)

Answer. We never did, as we always hold ships and owners responsible for the claims we have against them.

(Answer objected to.)

Int. No. 2. Why did you not demand payment of these bills of Keeling, or direct proceedings to be instituted against him to recover them?

(Question objected to.)

Answer. As soon as we found out through this Mr. Johnson—we were in hopes that he would pay these bills as he had paid the others,
151 but when we had assurance that he would pay no further claims our only resort was to the ship and owners.

EDWIN BAILEY.

Subscribed and sworn to before me this 18th January, 1868.

ROBT. LYON ROGERS, *U. S. Com'r.*

Deposition of William Meade Addison, a witness on the part of the appellees, taken before the same commissioner, at the same place, on the 28th February, 1868.

William Meade Addison, esq., being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

I am proctor for the claimants of the steamer Lulu in the above-mentioned case. On the 25th day of February, A. D. 1868, I called upon Mr. Orville Horwitz, the proctor for the libellants, and requested him to produce the witnesses for cross-examination which he had examined in my absence, while I was engaged in arguing a case before Chief Jus-

tice Chase, at November term, 1867. He declined to produce the witnesses. I made this call at the time above stated, and received Mr. Horwitz reply, as stated, at that time; but it may be the conversation, with reference to the testimony having been taken whiles I was arguing a case before the Chief Justice, took place on a previous occasion. After receiving his answer, I immediately addressed him a letter, dated the 25 of February, A. D. 1868, a true copy of which, marked Exhibit R No. 1, I herewith file. The original was sent by me to Mr. Horwitz. On the 27th of February, A. D. 1868, I received a reply thereto, the original of which I herewith file, marked Exhibit R No. 2; where-
152 upon I addressed him and sent to him a letter, dated 27th of February, A. D. 1868, a copy of which I herewith file, marked Exhibit R No. 3, to which I received from him a letter dated February 27th, A. D. 1868, marked Exhibit R No. 4, which I herewith file. In pursuance of my notice to Mr. Horwitz, I was before the commissioner at twelve o'clock m., on this 28th day of February, A. D. 1868, and Mr. Horwitz, the proctor for the libellants, was also here at the same time, and no witnesses are produced.

WM. MEADE ADDISON.

Subscribed and sworn to before me this 28 February, A. D. 1868.
ROBT. LYON ROGERS, *U. S. Com'sr.*

Deposition of A. Merrill Addison, a witness on the part of the appellee, taken before the same commissioner, at the same place and time.

A. Merrill Addison, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

I have inspected the Exhibits R No. 1 and R No. 3, filed with the testimony of Wm. Meade Addison, esq., taken in the above case. These papers are true copies of the original which were delivered by me in person to Orville Horwitz, esq.

A. MERRILL ADDISON.

Subscribed and sworn to before me this 28th February, A. D. 1868.
ROBT. LYON ROGERS, *U. S. Com'sr.*

153 Deposition of David F. Keeling, a witness for the appellants, taken before Isaac Brooks, jr., U. S. commissioner in and for the Maryland district, at the city of Baltimore, on the 23d day of June, 1868.

David F. Keeling, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

I reside in the city of Baltimore; I have resided here, I think, the first of September, 1865; I do business on the corner of Pratt street and Spear's wharf.

1st interrogatory. Were you or not the agent of the steamer Lulu; and, if so, from what time up to what time?

Answer. I was agent of the steamer Lulu from April, 1866, the time that she first commenced running from this port, to February, 1867.

2nd interrogatory. Look at the account filed with your libel in the

district court of the United States for the district of Maryland against the steamer Lulu (a copy of which is hereto annexed, marked N. Y. G. & I. Co., No. 1, together with the libel), and state whether that account be or be not a true account of your transactions with the Lulu during the periods therein mentioned?

Answer. It is a correct account up to the 25th of March, 1867. When this account was made out there was one voyage yet to be settled for, which made the ballance smaller.

3rd interrogatory. Where are the books showing your accounts and transactions with the steamer Lulu?

154 Answer. My books are in the office, and the accounts are in New York.

4th interrogatory. What amount of monies did you receive for or on account of the steamer Lulu for the last voyage, which you state is not included in your said account?

Answer. I don't recollect exactly, but I think it was between fifteen and seventeen hundred dollars.

5th interrogatory. What amount of monies did you receive for or on account of the steamer Lulu, from the time she commenced running from this port to Charleston, say from April, 1866, to the 29th of November, 1866?

Answer. I don't know.

6th interrogatory. Please bring up your book that will show that?

Answer. When?

7th interrogatory. Now.

Answer. My book-keeper is not at the office now, but you may have them any day you may want them; they are at your disposal.

8th interrogatory. Please bring them here to-morrow afternoon at 4½ o'clock.

9th interrogatory. Were you or not agent for other steamers and vessels at the time you were agent for the Lulu? If yea, state the number.

Answer. I was agent for one steamer, the Adele, plying between this port and Charleston. I did not have one sailing vessel under my sole control as agent.

10th interrogatory. Please state the number for which you acted as agent, though not sole agent.

155 Answer. I may have loaded from ten to fifteen or twenty vessels a week, over which vessels I had no control except to get them freights.

DAVID F. KEELING.

Then adjourned to Wednesday, the 24th day of June, 1868.

The proctor for the appellant at the same time filed with me the annexed paper, marked Exhibit N. Y. G. & I. Co., No. 2., being a copy of the enrollment of the Lulu at the port of Baltimore.

ISAAC BROOKS, JR.,
United States Commissioner for the District of Maryland.

Exhibit N. Y. G. & I. Co., No. 1.

[Copy.]

In admiralty.

[U. S. revenue stamp, 50 cts.]

To the Hon. William Fell Giles, judge of the United States district court for the district of Maryland:

The libel of David F. Keeling, of Baltimore City, in the State of Mary-

land, against the steamer "Lulu," her boats, tackle, apparel, and furniture, now lying in the port of Baltimore City, in the district aforesaid, and within the admiralty & maritime jurisdiction of this honorable court, and against all persons who may lawfully intervene for their interest therein, in a cause of contract, civil & maritime, alleges and articularly propounds as follows, to wit:

First. That said steamer, being in the port of Baltimore City aforesaid, & needing repairs and supplies to enable her to proceed on her voyage to sea, the libellant, at the request sometimes of her mas-
156 ter & sometimes of her owners, advanced and paid for said supplies and repairs sundry sums of money, at sundry times, amounting in the aggregate to nineteen thousand one hundred and six $\frac{35}{100}$ ($19,106 35) dollars, of which a more particular account is furnished in the schedule hereunto annexed.

Second. That at the times of said advances the said steamer was a foreign vessel, not belonging to any resident or citizen of the State of Maryland, and it was impossible to procure said repairs or supplies, or the monies therefor, except upon the credit of said steamer.

Third. That said advances were made by the libellant upon the credit of said steamer, as well as on that of her master & owners.

Fourth. That said supplies and repairs were necessary to enable the said steamer to proceed on her voyage to sea.

Fifth. That the sum of three thousand four hundred & ninety-two & $\frac{02}{100}$ dollars ($3,492 02) remains unpaid, and, with proper interest thereon, is now due to the libellant on account of the advances aforesaid, & that said balance is a lien on said steamer.

Sixth. That all and singular the premises are true, & within the admiralty & maritime jurisdiction of this honorable court.

Wherefore the libellant prays that process in due form of law may issue against the said steamer "Lulu," her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, and that this honorable court will pronounce for the aforesaid advances made as aforesaid, and decree the same to be paid with costs to him, and grant him such other and further relief as his case
157 may require.

JAMES A. L. McCLURE,
Proctor for Libellant.

True copy: Test:

JAS. W. CHEW, *Clk Dist. C't.*

[Copy.]

Statement of receipts and disbursements.—Steamship Lulu & owners in a/c with David F. Keeling.

1866.							Dr.
June	25.	To cash paid Boyce,	for coal,	(See vouchers.)			$549 50
	"	" " " Kimberly,	" beef,	"	"		89 51
July.		" " " Hubbard & Delane,	for blocks,	"	"		4 20
		" " " Coleman and Bailey,	" ship stores	"	"		326 91
		" " " Bibb & Co.,	" repairs,	"	"		14
	9.	" " " H. Kimberly,	" beef,	"	"		84 09
	23.	" " " Boyce,	" coal,	"	"		824 25
	28.	" " " Sterms & Whitney,	" tubes & pipes,	"	"		61 71
		" " " " "	" "	"	"		140 50
		" " " Skinner & Forsyth,	" repairs,	"	"		79 81
		" " " Coleman & Bailey,	" ship stores,	"	"		193 56
		" " " Holmes & Son,	" engineer stores,	"	"		147 14
		" " " Boyce,	" coal,	"	"		628

		" " "	H. Kimberly,	" beef,	" "		77	79
		" " "	Coleman & Bailey,	" ship stores,	" "		227	67
August	20.	" " "	H. Kimberly,	" beef,	" "		79	77
September.		" " "	Mordecai & Co.,	" coal,	" "		706	87
		" " "	Holmes & Son,	" engineer stores,	" "		49	06
		" " "	" "	" "	" "		97	43
October	2.	" " "	Coleman & Bailey,	" ship stores,	" "		165	64
		" " "	Philburn & McGee,	" sails,	" "		121	
		" " "	Hubbard & De Lane,	" blocks,	" "		17	
158		" " "	Boyce,	" coal,	" "		431	71
		" " "	Holmes & Son,	" engineer stores,	" "		58	
		" " "	" "	" "	" "		24	46
		To cash paid	Coleman & Bailey,	for ship stores,	" "		186	57
		" " "	Holmes & Son,	" engineer "	" "		81	13
October	19.	" " "	Hazlehurst & Co.,	" repairs,	" "		600	
		" " "	H. Kimberly,	" beef,	" "		105	98
		" " "	Skinner & Forsyth,	" repairs,	" "		170	10
		" " "	Coleman & Bailey,	" ship stores,	" "		103	86
November	18.	" " "	Hazlehurst & Co.,	" repairs,	" "		500	
		" " "	George & Jenkins,	" oil,	" "		55	25
		" " "	D. B. Smull,	" repairs,	" "		16	06
		" " "	Murray & Clarke,	" do.	" "		306	10
		" " "	Holmes & Son,	" engineer stores,	" "		41	83
		" " "	Coleman & Bailey,	" ship,	" "		204	60
		" " "	Boyce,	" coal,	" "		741	10
	27.	" " "	E. Dorrey,	" plumbing,	" "		7	
		" " "	Skinner & Forsyth,	" repairs,	" "		77	64
		" " "	H. Kimberly,	" beef,	" "		151	81
		" " "	Coleman & Bailey,	" ship stores,	" "		255	88
	28.	" " "	Kimberly,	" beef,	" "		110	20
		" " "	Brown,	" oil,	" "		32	85
		" " "	King,	" carpenter,	" "		18	09
		" " "	Asks,	" repairs,	" "		38	
		" " "	Boyce,	" coal,	" "		986	25
		" " "	Mace,	" repairs,	" "		36	78
		" " "	Kimberly,	" beef,	" "		8	92
		" " "	Holmes & Son,	" engineer stores,	" "		981	25
		" " "	H. Kimberly,	" beef,	" "		692	01
		Amount carried forward					$10,235	67
159		Continued:						
November.		To amount bro't forward					10,235	67
		" cash paid pay-rolls,		for wages,	(See vouchers.)		5,071	30
		" " "		" "	" "		1,121	50
		" " "		" "	" "		372	84
		" " Murray & Clarke,		" repairs,	" "		1,732	39
		" " Hazlehurst & Co.,		" "	" "		500	
		" " pay-roll,		" wages,	" "		72	65
							19,106	35

Cr.

November	30.	By freight,	collected in	Charleston		734	00
	"	" wharfage,	"	"	"	81	76
	"	" charges,	"	"	"	18	26
	"	" "	"	"	Baltimore	1,165	22
	"	" wharfage,	"	"	"	6	78
	"	" freight,	"	"	"	969	57
	"	" "	"	"	Charleston	1,941	87
	"	" wharfage,	"	"	"	75	22
	"	" charges,	"	"	"	2	65
	"	" "	"	"	Baltimore	2	40
	"	" freight,	"	"	"	369	56
	"	" "	"	"	"	485	46
	"	" wharfage,	"	"	"	11	76
	"	" passengers,	"	"	"	28	
December	20.	" "	"	"	Charleston	20	
	"	" freight,	"	"	"	2,097	54
	"	" wharfage,	"	"	"	71	98
	"	" charges,	"	"	"	33	54
	"	" freight,	"	"	Baltimore	662	63

160	To amount bro't forward					19,106 35
	By wharfage, collected in Baltimore				15 39	
	" grapes, for engineer, collected in Baltimore				2 50	
February.	" freight, " " Charleston				2,719 93	
	" wharfage, " " "				91 41	
	" freight, " " Baltimore				391 21	
	" passengers, " " "				30	
	" Hyson, " " "				10	
	" wharfage, " " "				12 02	
	" charges, " " "				284 16	
	" damaged cargo sold. " "				24 75	
	" freight, collected in Charleston				2,587 41	
	" wharfage, " " "				80 81	
	" passengers, " " "				40	
	" freight, " " Baltimore				292 70	
	" wharfage, " " "				4 09	
	" freight, " " "				219 93	
	" wharfage, " " "				11 44	
	" passengers, " " "				10	
	" charges, " " "				8 38	
						15,614 33
	To balance due David F. Keeling					$3,492 02

E. & O. E.
BALTIMORE, 25*th March*, 1867.

True copy: Test:

JAS. W. CHEW, *Clk Dist. C't.*

Exhibit N. Y. G. & I. Co., No. 2.—Enrollment.

No. 64.—Enrollment in conformity to an act of the Congress of
161 the United States of America entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

Enoch Pratt, of Baltimore, State of Maryland, $\frac{1}{2}$ owner, having taken or subscribed the oath required by the said act, and having sworn that he, with Henry Janes, $\frac{1}{2}$ owner, same place, are citizens of the United States, sole owner of the ship or vessel called the Lulu, of Baltimore, whereof George Shaw is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at a time & place not given, as per enrolment No. 121, granted at the port of New York, May 10, 1866, now surrendered—owners and district changed. And said enrolment having certified that the said ship or vessel has two decks and two masts, and that her length is one hundred & sixty-six $\frac{2}{100}$ feet, her breadth twenty-seven $\frac{80}{100}$ feet, her depth eighteen $\frac{20}{100}$ feet, her height ——— $\frac{}{100}$ feet; that she measures five hundred & ninety-two tons and $\frac{29}{100}$ hundredths, viz.:

	Tonnage.	$\frac{1}{100}$
Capacity under tonnage deck	570	37
Capacity between decks above tonnage deck		
Capacity of enclosures on the upper deck	21	92
Total tonnage		

And that she is a propeller, has a round stern, and a billet head. And the said owners having agreed to the description and admeas-

162 urement above specified, and sufficient security having been given, according to the said acts, the said propeller has been duly enrolled at the port of Baltimore.

Given under our hands and seals at the port of Baltimore this 5th day of April, in the year one thousand eight hundred and sixty-seven.

W. T. R. S.

PORT OF BALTIMORE, COLLECTOR'S OFFICE,
June 23, 1868.

I certify that the within is a true copy of the enrolment of the steamer Lulu on record at this port.

J. M. McCORMICK,
Dep'y Collector.

Depositions of John T. Johnson and Joshua J. Henry, witnesses for the appellants, taken before the same commissioner, at the same time and place.

John T. Johnson, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. You were directed by the commissioner on [on] yesterday evening, to be at his office this afternoon with the books of Mr. David F. Keeling; have you those books with you?

Answer. I have nothing to do with Mr. Keeling, and, of course, have no right to his books.

2nd interrogatory. Do you know why they are not here?

Answer. I saw Mr. Keeling's books at the office of Messrs. Atkinson & Dulaney this morning, where they were sent through mistake
163 instead of the office of Mr. Addison, the proctor for the appellants. I have just come from the office of Messrs. Atkinson & Dulaney, and they are not where I saw them this morning, and I do not know where they are. I came here this afternoon, expecting to be examined upon them by Mr. Addison.

J. T. JOHNSON.

Subscribed & sworn to before me this 24th day of June, 1868.

ISAAC BROOKS, JR.
U. S. Commissioner.

Joshua J. Henry, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

1st interrogatory. What relation do you hold to the New York Guaranty and Indemnity Company?

Answer. I am the president of that company.

2nd interrogatory. Look at the annexed paper, marked N. Y. G. & I. Co., No. 3, and state whether or not that be the instrument of writing conveying the steamer Lulu to your company.

Answer. It is.

3rd interrogatory. State whether or not the words "Mortgage bill of sale" on the back of that instrument were put there at the time of the execution thereof.

Answer. They were.

4th interrogatory. State whether or not that instrument was intended as a mortgage to secure the payment of the twelve thousand dollars therein mentioned, or whether it was designed to operate as an absolute bill of sale.

(Question objected to both as to form and substance.)

164 Answer. Distinctly as a mortgage, and not as an absolute bill of sale.

5th interrogatory. State whether or not your company ever took possession of said vessel under said bill of sale, or ever took into or ever had in possession said vessel under said bill of sale.

Answer. Never for one moment.

6th interrogatory. Look at the papers marked N. Y. G. & I. Co., No. 4 & 5, & state whether they were ever in the possession of your company, and how and when.

Answer. They were in the possession of our company on the day of their date, the 24 of August, 1866, when we made the loan upon the vessel.

7th interrogatory. State whether you are acquainted with the seals on the respective papers; and, if yea, state whether or not they are genuine.

Answer. I am acquainted with the seals, and know them to be genuine.

8th interrogatory. State whether or not the sum of twelve thousand dollars, mentioned in the aforesaid bill of sale, was or not a loan made on the 24th of August, 1866, or whether said bill of sale was a security for a pre-existing debt.

(Question objected to as leading in form, and bad in substance.)

(Question waived.)

9th interrogatory. State what was the consideration of the aforesaid mortgage or bill of sale?

(Question objected to.)

Answer. A loan of twelve thousand dollars on that date.

165 (Question objected to after the answer of the witness was given.)

10th interrogatory. On what security was that loan made?

Answer. On the security of the vessel.

11th interrogatory. State whether or not the enrollment of said steamer was changed upon the execution of said bill of sale.

(Question objected to.)

Answer. It was not.

12th interrogatory. Why was it not changed?

(Question objected to.)

Answer. Question waived.

At this time the proctor for the appellants files the paper marked Exhibit N. Y. G. & I. Co., No. 6.

13th interrogatory. State why the enrollment of said steamer was not changed.

(Question objected to.)

Answer. It was not changed because we supposed that the loan would be paid on maturity, and that the change was not necessary.

14th interrogatory. How long was the loan to run, referred to above?

Answer. Six months.

15th interrogatory. State why the abbreviation (Mtg.) which appears on the original bill of sale, marked N. Y. G. & I. Co., No. 3, was placed on that paper.

(Question objected to.)

Answer. To express that it was a mortgage bill of sale.

16th interrogatory. State whether or not the loan of twelve thousand dollars above spoken of has ever been repaid to your company, in whole or in part.

Answer. Not any part of it.

166 17th interrogatory. State under whose management the Lulu continued after the execution of said bill of sale, if you know the fact.

Answer. I know that we had nothing to do with it, and that she was left in the care of the owners.

Cross-examined by Mr. Frazier:

1st cross-interrogatory. Is the sum of money, to wit, the sum of twelve thousand dollars, mentioned by you in your examination in chief, the same sum of money mentioned and described in appellants' Exhibit N. Y. G. & I. Co., No. 3, or another and a different sum?

Answer. It is the same sum.

JOSHUA J. HENRY.

Subscribed & sworn to before me this 24th day of June, 1868.

ISAAC BROOKS, JR., *U. S. Comm.*

The proctor for the appellants files, on this 25th day of June, the paper marked Exhibit N. Y. G. & I. Co., No. 7, which he intended to file at the taking of the above deposition, but which by mistake was not handed to the commissioner.

Exhibit N. Y. G. & I. Co., No. 3.

[3 U. S. int. rev. stamps, of $10, $1, and $1, respectively, cancelled.]

To all to whom these presents shall come, greeting:

Know ye, that we, Charles A. Whitney, ½d, Samuel P. Griffin, ¼, and William H. Wickham, ¼, all of the city, county, and State of New York, are sole owners of the steamer or vessel called the "Lulu," of New York, of the burthen of $592\frac{29}{100}$ tons, or thereabouts, for and in consideration of the sum of twelve thousand dollars, lawful money of the United

167 States of America, to us in hand paid before the sealing and delivery of these presents by the New York Guaranty and Indemnity Company of New York City, the receipt whereof we do hereby acknowledge, and are therewith fully satisfied, contented, and paid, have bargained and sold, and, by these presents, do bargain and sell, unto the said New York Guaranty and Indemnity Company, their executors, administrators, and assigns, the whole of the said steamer or vessel, together with all and singular the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging.

The certificate of the enrollment of which said steamer or vessel is as follows, to wit:

Enrollment.—Permanent.

No. 121.—Enrollment, in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same."

Charles A. Whitney, of New York, State of New York, having taken or subscribed the oath required by the said act, and having sworn that

he, said Charles A. Whitney, ⅓, Sam'l P. Griffin, ⅓, and Wm. H. Wickham, ⅓, of said place, are citizens of the United States, sole owners of the ship or vessel called the Lulu, of New York, whereof ——— is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was formerly a gov't vessel, as per copy of enrollment No. 437, at this port, Dec. 13, 1865, now cancelled—original lost. And said copy of enrollment having certified that the said
168 ship or vessel has two decks and two masts, and that her length is one hundred and sixty-six feet, her breadth twenty-seven $\frac{8}{10}$ feet, her depth eighteen $\frac{7}{10}$ feet, and that she measures five hundred & ninety-two $\frac{29}{100}$ tons, and that she is round-sterned, st.-propeller, has round tuck, no galleries and billet head. And the said Charles A. Whitney having agreed to the description and admeasurement above specified, and sufficient security having been given according to said act, the said st.-propeller has been duly enrolled at the port of New York.

Given under our hands and seals at the port of New York this 10 day of May, in the year one thousand eight hundred and sixty-six.

To have and to hold the said steam-propeller "Lulu," or vessel, and appurtenances thereunto belonging, unto them the said New York Guaranty and Indemnity Company, their executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of them the said New York Guaranty and Indemnity Company, executors, administrators, and assigns, forever; and we, the said Charles A. Whitney, Samuel P. Griffin, and William H. Wickham have, and, by these presents, do promise, covenant, and agree, for ourselves, our heirs, executors, and administrators, to and with the said New York Guaranty and Indemnity Company, their heirs, executors, administrators, and assigns, to warrant and defend the said steam-propeller or vessel, and all the other beforementioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, we, the said Charles A. Whitney, Samuel
169 P. Griffin, and Wm. H. Wickham, have hereunto set our hands and seals this twenty-fourth day of August, in the year of our Lord one thousand eight hundred and sixty-six.

Witness:

J. W. MARDEN.

CHAS. A. WHITNEY. [SEAL.]
S. P. GRIFFIN, [SEAL.]
By CHAS. C. EDEY, *Att'y.*
WM. H. WICKHAM. [SEAL.]

Sealed and delivered in the presence of—
DANIEL R. VAN WINKLE.

UNITED STATES OF AMERICA,
City and County of New York, ss:

Be it known that on the twenty-fourth day of August, one thousand eight hundred and sixty six, before me, Jas. R. Davies, a public notary in and for the State of New York, duly commissioned and sworn, dwelling in said city of New York, personally came Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, and acknowledged the foregoing bill of sale to be their free act and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

[SEAL'S PLACE.]

JAS. R. DAVIES,
Notary Public.

[5-cts. U. S. int. rev. stamp, cancelled.]

CUSTOM HOUSE, N. Y.—Rec'd for record and recorded August 25, 1866, at 1 p. m. Liber 53, pg. 178. B. S. E. V.

L. WYMAN, JU. *Register.*
R. WYNKOOP, *D. C.*

170 *Exhibit N. Y. G. & I. Co., No.* 4.

CUSTOM-HOUSE, NEW YORK,
Collector's Office, Aug. 24th, 1866.

SIR: I hereby certify that there are no liens, mortgages, or claims against the steamship "Lulu" appearing on the books of enrollment of enrolled vessels at this office up to this date.

[SEAL.] R. WYNKOOP, *D'y Coll.*

L. W., JR. J. A. H. J. J. H.

N. Y. G. & I. Co., No. 5.

COUNTY CLERK'S OFFICE,
New York, August 24th, 1866.

I do hereby certify that there are no liens on file in this office against the steamship Lulu up to this date.

[SEAL'S PLACE.] WM. C. CONRAD, *County Clerk.*

[5-cts. U. S. int. rev. stamp.]

Exhibit N. Y. G. & I. Co., No. 6.—*Enrollment.—Permanent.*

$121—Enrollment, in conformity to an act of Congress of the United States of America, entitled "An act for enrolling and licens-
171 ing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," and of "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam," passed 7th July, 1838, and amended 30th August, 1852, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6th, 1864.

Charles A. Whitney, of New York, State of New York, having taken or subscribed the oath required by the said act, and having sworn that he, said C. A. Whitney, ⅓, Samuel P. Griffin, ⅓, and Wm. H. Nickerson, ⅓, of said place, are citizen of the United States, and sole owner of the steam-propeller or vessel called the Lulu of New York, whereof ——— is at present master, and, as he hath sworn, is a citizen of the United States, and the said steam propeller or vessel was formerly a (State of) government vessel, as per copy of enrollment No. 437, dated at this port, Dec. 13, 1865, now cancelled—original lost; and said copy of enrollment having certified that the said ship or vessel has two decks and two masts, and that her length is one hundred and sixty-six feet, her breadth twenty-seven feet 8-tenths, her depth eighteen feet 7-tenths, and that she measures five hundred and ninety-two 29-hundredths tons, viz:

	Tons.	1-100.
Capacity under tonnage deck	570	37
Capacity between decks above tonnage deck, (deck house)	17	63
Capacity of enclosures on upper deck, (purser's room)	4	29
Total tonnage		

That she is a round-sterned steam-propeller, has round tuck and billet head, and that the said Whitney having agreed to the description and admeasurement above specified, and sufficient security having
172 been given according to the said act, the said prop. has been duly enrolled at the port of New York.

Given under our hands and seals of office at the port of New York this 10 day of May, in the year one thousand eight hundred and sixty-six.

CUSTOM-HOUSE, NEW YORK.

I hereby certify that the within is a true copy of the original now on record in this office, and no change since appears on our books.

Given under my hand and seal of office this twenty-third day of June.

[SEAL'S PLACE.] R. WYNKOOP, *Dep. Coll.*

L. G., J. A. H.

Exhibit N. Y. G. & I. Co., No. 7.

[$12 00 U. S. R. S.]

To all whom these presents shall come, greeting:

Know ye, that we, Charles A. Whitney, ⅓, Samuel P. Griffin, ⅓, and William H. Wickham, ⅓, all of the city, county, and State of New York, are sole owners of the steamer or vessel called the "Lulu," of New York, of the burthen of 592 $\frac{29}{100}$ tons, or thereabouts, for and in consideration of the sum of twelve thousand dollars, lawful money of the United States of America, to us in hand paid before the sealing and delivery of these presents, by the New York Guaranty and Indemnity Company of New York City, the receipt whereof we do hereby acknowledge, and are therewith fully satisfied, contented, and paid, ha bargained and sold, and, by these presents, do bargain and sell, unto the said New York Guaranty and Indemnity Company, their executors, administrators, and
173 assigns, the whole of the said steamer or vessel, together with all and singular the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging. The certificate of enrollment of which said steamer or vessel is as follows, to wit:

Enrollment.—Permanent.

No. 121.—Enrollment in conformity to an act of Congress of the United States of America entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6th, 1864.

Charles A. Whitney, of New York, State of New York, having taken or subscribed the oath required by the said act, and having sworn that he, the said Charles A. Whitney, ⅓, Samuel P. Griffin, ⅓, and William H. Wickham, ⅓, of said place, are citizen of the United States, and sole owner of the ship or vessel called the Lulu, of New York, whereof ——— is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was formerly a government vessel, as per copy of enrollment No. 437, at this port, December 13, 1865, now cancelled—original lost; and said copy of enrollment having certified that the said ship or vessel has two decks and two masts, and that her length is 166 — tenths, her breadth 27 & $\frac{8}{10}$ ft., her depth 18 & $\frac{7}{10}$ feet, and that she measures 592 $\frac{29}{100}$ tons, viz:

	Tons.	1-100.
Capacity under tonnage deck	—	—
Capacity between decks above tonnage deck	—	—
Capacity of enclosures on upper deck	—	—
174 Total tonnage	—	—

That she is a round-sterned steam-propeller, has round tuck and billet head, and that the said Charles A. Whitney having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said s.-propeller has been duly enrolled at the port of New York.

Given under our hands and seals of office, at the port of New York, [SEAL.] this tenth day of May, in the year one thousand eight hundred and sixty-six.

To have and to hold the said steam-propeller Lulu, or vessel, and appurtenances thereunto belonging, unto them, the said New York Guaranty and Indemnity Company, their executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of them, the said New York Guaranty and Indemnity Company, their executors, administrators, and assigns, forever. And we, the said Charles A. Whitney, Samuel P. Griffin, & Wm. H. Wickham, have promised, covenanted, and agreed, and, by these presents, do promise, covenant, and agree, for ourselves, our heirs, executors, and administrators, to and with the said New York Guaranty and Indemnity Company, their heirs, executors, administrators, and assigns, to warrant and defend the said steam-propeller or vessel, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, we, the said Charles A. Whitney, Samuel P. Griffin, & Wm. H. Wickham, have hereunto set our hands and seals this 24th day of August, in the year eighteen hundred and sixty-six.

175 CHARLES A. WHITNEY. [S.]
S. P. GRIFFIN, [S.]
By C. C. EDDY, *Att'y.*
WM. H. WICKHAM. [S.]

Sealed and delivered in the presence of—
LEMUEL R. VAN WINKLE.

UNITED STATES OF AMERICA,
State of N. Y., City & Co. of N. Y., ss:

Be it known that on the 24 day of August, 1866, before me, James R. Davis, a public notary in and for the State of New York, duly commissioned and sworn, dwelling in said city of New York, personally came Charles A. Whitney, Samuel P. Griffin, and William H. Wickham, and acknowledged the foregoing bill of sale to be their free act and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

JAMES R. DAVIS, *Notary Public.*

Received for record & recorded Aug. 25, 1866, at 1 p. m.
L. WYMAN, JR., *Register.*

CUSTOM-HOUSE, NEW YORK, *June* 23, 1868.

I hereby certify that the within is a copy of bill of sale
{ SEAL'S } made by me this 23d day of June, from book 53, page
{ PLACE. } 178, Bills of Sale of Enrolled Vessels, and is a true copy from said records. L. WYMAN, JR., *Register.*

Test: H. KILLNUOG, *D. C.*

Afterwards, to wit, on the 16th day of November, in the year of our Lord 1868, the circuit court here filed the following opinion, and made and passed the following decree, to wit:

176 Circuit court of the U. States, Maryland district.—April term, 1868.

JAMES A. SKINNER AND WILLIAM H. FORSYTH
v.
STEAMER LULU. } In admiralty.

Opinion of Chief Justice Chase.

This is a suit in admiralty to enforce a lien claimed upon the steamer Lulu for repairs made upon her at the request of the master. It is consolidated with other suits, all brought by material men for supplies or repairs to the vessel.

The Lulu was a steamer owned in New York, which was her home port, but employed in the trade between Baltimore, in Maryland, and Charleston, in South Carolina. When the libel was filed she had been in the trade about eleven months, from April, 1866, to March, 1867. The repairs and supplies for which satisfaction is sought were furnished in Baltimore during and after July, 1866, but chiefly in November and afterwards, at fair prices, and were proper and necessary.

In each suit the New York Guaranty and Indemnity Company has filed a claim and answer, asserting a prior right to satisfaction out of the proceeds of the steamer, which has been sold under an order of the court. The claim of this respondent is founded upon a bill of sale, made to the company by the former owners of the Lulu in consideration of an advance of twelve thousand dollars on the 24th of August, 1866. This bill of sale, though in form absolute, was intended as a mortgage to secure repayment of the advance in six months from the date, but no part of it has been repaid.

The only question in the cause is, whether the material men,
177 under the circumstances of the case, had a lien for the repairs and supplies; for if they had, this lien is superior to that created by the bill of sale or mortgage, whether prior or posterior in time. It was insisted in the argument that Baltimore was the real home port of the Lulu, and therefore that there could be no lien for repairs and supplies. It is true that the admiralty law, as administered in the United States, does not give a lien for repairs and supplies in the home port, and it might be a material circumstance in the decision of this case if it appeared that the Lulu was chartered to citizens of Baltimore for the Charleston trade. Such a charter might be considered as transferring her home port from New York to Baltimore, especially when taken in connection with the proved facts of the case, which show that Baltimore might very fairly be called the actual home of the Lulu during the time of the transactions in controversy. But there is no evidence of such a charter, and it is clear that under the American decisions, Baltimore, being in another State than that in which the vessel was owned and enrolled, must be regarded as a foreign port, and that, in a proper case, material men would be entitled to a lien.

The question then recurs, "Were the repairs and supplies in question furnished under such circumstances as would entitle the material men to the liens which they claim?"

The general rule applicable to this class of cases was first laid down in the General Smith, 4 Wheat., 443, as follows: "When repairs have been made or necessaries have been furnished to a ship in a port of the

State to which she does not belong, the general maritime law, following the civil law, gives the party a lien on the ship itself for his security, and he may well maintain a suit in rem. in the admiralty to enforce
178 his right." The same rule, in substance, was affirmed in Peyroux v. Howard, 7 Pet., 324, and in the brig Nestor, 1 Sum., 73, and in several other cases.

The nature and degree of necessity essential to the creation of a lien for repairs and supplies was much considered in the case of the bark Laura, or Thomas v. Osborn, 19 How., 28–31. The court said, in substance, that it is only in case of necessity that the master can hypothecate the vessel by a bottomry bond or other express obligation, or create a lien by obtaining repairs and supplies on her credit (p. 30), and that to constitute a case of apparent necessity not only must the repairs and supplies be needful, but it must be apparently necessary for the master to have the credit to procure them (p. 31). If the master has funds which he ought to apply in payment, but does not, and the furnisher knows this fact, or has the means, by due diligence, to ascertain it, then no case of apparent necessity for a credit exists, and no maritime lien is created by furnishing repairs and supplies.

The rule on this point was stated by Chief Justice Taney (who, with Justices McLean and Wayne, dissented from the judgment of the majority) somewhat less stringently, as follows: That supplies and repairs in a foreign port, if necessary to enable the vessel to proceed, are presumed to have been furnished and made on the credit of the vessel, unless the contrary appears, as well as on that of the master and owners, and create a lien which may be enforced in admiralty (p. 28). The difference between the court and the dissenting justices on this point was that the former held that in order to the creation of a lien there
179 must be a necessity for the credit as well as a necessity for supplies, while the latter seem to have thought that if the supplies were necessary the credit may be presumed.

The same subject was further considered at the same term in the case of the Sultana, or Pratt v. Reed, 19 How., 359. That case was, in its general features, much like the case now under consideration. It was a libel against the steamer Sultana for supplies of coal from time to time from June, 1852, to May, 1854, and the lien for supplies was contested by the answer, which set up a claim under a prior mortgage on the steamer, dated 31 Oct., 1853. The court held that the material men had no lien, and decreed the proceeds to the mortgagees.

The court stated the rule thus: "The proof of a necessity at the time of procuring a supply for a credit on the vessel" * * * * "is as essential as that of the necessity of the article itself." "It is only under very special circumstances, and in an unforeseen and unexpected emergency, that an implied maritime hypothecation can be created." The decision of the case was put upon the ground, not that the supplies were not necessary, but there was no sufficient proof of necessity for the implied hypothecation of the vessel, or of any unexpected or unforeseen exigency that required it.

A distinction between the cases now to be adjudged and the case thus decided was attempted in the argument, but I find myself unable to make any which has substance. That decision was by a unanimous court, and on the very point which must govern these cases, namely, the necessity of the credit; and I am unable to discover any very special circumstances—any unexpected and unforeseen emergency—in these cases
180 which will take them out of the application of the rule which it establishes. The repairs and supplies in all of them were furnished

in the ordinary course of trade and under ordinary circumstances. There is no proof whatever of any unusual exigency. Except in the case of Coleman and Bailey, there is no averment of the necessity of a credit to the steamer.

It was contended also that the rule goes beyond any that has heretofore been applied to material men by the courts, and I must admit that I have found no other case in which proof so stringent as that required by it has been held essential to a lien for repairs and supplies. But the rule established by the unanimous judgment of the Supreme Court is not on that account the less binding to me.

I am constrained, therefore, to hold that the furnishing of the repairs and supplies set forth in the several libels did not create a maritime lien in favour of the libellants, and that the respondents are entitled to the proceeds in the registry after payment of costs. A decree will be made accordingly.

Decree.

In the circuit court of the United States for the fourth circuit in & for the Maryland district.

CLAIMANTS OF STEAMER LULU
vs.
JAMES A. SKINNER & OTHERS.

This cause, coming on to be heard, was argued by counsel, &, having been freely considered, the court is of opinion that the decree of the district court in this cause must be reversed. It is, therefore, this 16th day of November, A. D. 1868, adjudged, ordered, and decreed
181 that so much of the funds in the court as are applicable to the payment of the claim of Henry R. Hazlehurst & William D. Weigand, trading as Hazlehurst & Company, after the payment of the costs of court, be paid to the said claimant, the New York Guaranty & Indemnity Company.

And as to the disposition of the residue of the funds in court, it is further ordered & adjudged that the same shall await the further order and decree of this court.

S. P. CHASE, *Ch. Jus. U. States.*

From which said decree, so as aforesaid passed, the said Henry R. Hazlehurst and William D. Weigand, in open court, here prayed an appeal to the Supreme Court of the United States to be held at the city of Washington on the first Monday in December next, and to them it is granted.

Appeal bond.

Know all men by these presents, that we, Henry R. Hazlehurst, William D. Weigand, and W. P. Williamson, of Baltimore City, and State of Maryland, are held and bound unto the New York Guaranty and Indemnity Company, a corporation incorporated by the laws of the State of New York, and to its certain attorney and assigns, in the full sum of five hundred dollars; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals this twentieth day of November, A. D. one thousand eight hundred and sixty-eight.

182 Whereas by a decree of the circuit court of the United States in and for the district of Maryland, passed in a cause therein on

appeal from the district court of the United States of said district, in admiralty, in which said Hazlehurst and Weigand were libellants of, and said the New York Guaranty and Indemnity Company claimants of, the steamer Lulu, and which decree bears date the sixteenth day of November, instant, the libel of said Hazlehurst and Weigand was dismissed with costs; and whereas, on the day of said decree, the said libellants prayed and entered an appeal therefrom, in open court, to the Supreme Court of the United States:

Now the condition of the above obligation is such, that if the above-bounden Henry R. Hazlehurst and William D. Weigand shall not cause a transcript of the record and proceedings of the said decree to be transmitted to the said Supreme Court of the United States within the time required by law, and prosecute the said appeal with effect, and also satisfy and pay to said the New York Guaranty and Indemnity Company aforesaid, its certain attorney, or assigns, in case the said decree shall be affirmed, all costs and damages that shall be awarded by said Supreme Court of the United States, and also all just damages for delay and costs and interest on the said appeal, then this bond to remain in full force and virtue; otherwise to be of no effect.

H. R. HAZLEHURST. [SEAL.]
W. D. WIEGAND. [SEAL.]
WM. P. WILLIAMSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN G. WILLIAMSON.

183 Bond approved Nov. 23rd, 1868.

WILLIAM F. GILES.

The following agreement was filed in the circuit court here, to wit:

Lulu cases.—In the circuit court of the U. States for the 4th circuit in and for the Maryland district.

It is agreed in the above case that the correspondence between proctors filed in the papers, as well as the notices to counsel to appear before commissioners, may be omitted from the record to be sent to the Supreme Court.

It is also agreed that the charter of incorporation of the New York Guaranty and Indemnity Company (the claimants) may also be omitted from said record, and it is admitted that said company is a legally incorporated institution, and that no question upon that point shall be raised in the Supreme Court.

GEO. H. WILLIAMS,
For Appellants.
WM. MEADE ADDISON,
For Appellee.

JAN'Y 2*rd*, 1869.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things concerning the same, be transmitted to the said Supreme Court, and the same are transmitted accordingly.

184 In testimony that the aforegoing is a true copy, taken and made from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit court this twentieth day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.]

JAMES W. CHEW,
Clerk Circuit Court.

9 Wallace 101 – 135

IN THE

Supreme Court of the United States.

HAZELHURST & WEIGAND,

VS.

STEAMER LULU.

APPELLANT'S STATEMENT AND BRIEF.

This is a suit in Admiralty to enforce a claim for repairs to the steamer Lulu done at the request of the Master,

The Libel was filed by the appellants in the District Court of Maryland, on the 27th March, 1867, (*Record, p.* 64,) for a balance of $2,603.35, due for repairs done at Baltimore by the libellants. The vessel was attached on same day, (*p.* 77.) On 3d April, 1867 The New York Guaranty and Indemnity Company filed their answer to the libel, and claimed as Mortga-

gees the property in the vessel, insisting that their claim had priority over the libel claim of Hazelhurst and Weigand, (*pp.* 78 *and* 79.)

Other libels having been filed against the steamer prior and subsequent to the libel of Hazelhurst and Weigand, and the vessel having been sold under an order of the Court, passed on 25th March, 1867, in the case of the libel of Skinner and Forsyth, and at the instance of the claimants, (*p.* 13,) the case of these libellants was on their own application consolidated with the case of Skinner and Forsyth, and by a subsequent order passed on 4th June, 1867, (*p.* 95,) *all the libels* were consolidated.

On 19th June, 1867, the District Court passed a Decree allowing the claim of the appellants as a lien against the steamer, (*p.* 96.)

From this decree an appeal was taken to the Circuit Court, and the Decree reversed and the amount theretofore decreed to the appellants directed to be paid to the New York Guaranty and Indemnity Company.

From this reversal an appeal was taken to the Supreme Court of the United States and forms the subject matter now before the court. The Record is encumbered with all the libels filed against the Lulu and with the claims and accounts thereto attached. They may be found from page 1 to page 92 of the Record.

The cases having all been consolidated by orders of Court, the testimony was taken as *applicable to all the cases.* It will be found from page 101 to page 167 of the Record.

The repairs done to the vessel by the appellants were all done by the direction and at the instance of the master, [D. C Childs,] whose approval is attached to the bills. They were ordered on the credit of the ship. (See deposition of Williamson, page 121, and Carey, page 122.) The repairs were then necessary *by implication of law.* [See opinion of S C. U. S. in the Bark Grapeshot p. 6.] They were, also, necessary *in paint of fact* to enable the vessel to proceed on her voyage. (See depositions of Williamson and Carey, pp. 121, 122.] In regard to these facts there is no conflict of evidence. The steamer was owned and enrolled in New York; Baltimore was not therefore her home port.

The question in the case then is: are necessary repairs done to a vessel in a foreign port, at the instance of the master, and under the circumstances detailed in the evidence, a lien on the vessel?

The recent case of the BARK GRAPESHOT, lately decided by this court, would seem to furnish a complete answer to the views heretofore urged in opposition to the validity of this lien.

The CHIEF JUSTICE in deciding this case below, felt "constrained by the unanimous judgment of the S.. not show the necessity for the credit to the vessel?"

gees the property in the vessel, insisting that their claim had priority over the libel claim of Hazelhurst and Weigand, (*pp.* 78 *and* 79.)

Other libels having been filed against the steamer prior and subsequent to the libel of Hazelhurst and Weigand, and the vessel having been sold under an order of the Court, passed on 25th March, 1867, in the case of the libel of Skinner and Forsyth, and at the instance of the claimants, (*p.* 13,) the case of these libellants was on their own application consolidated with the case of Skinner and Forsyth, and by a subsequent order passed on 4th June, 1867, (*p.* 95,) *all the libels* were consolidated.

On 19th June, 1867, the District Court passed a Decree allowing the claim of the appellants as a lien against the steamer, (*p.* 96.)

From this decree an appeal was taken to the Circuit Court, and the Decree reversed and the amount theretofore decreed to the appellants directed to be paid to the New York Guaranty and Indemnity Company.

From this reversal an appeal was taken to the Supreme Court of the United States and forms the subject matter now before the court. The Record is encumbered with all the libels filed against the Lulu and with the claims and accounts thereto attached. They may be found from page 1 to page 92 of the Record.

The cases having all been consolidated by orders of Court, the testimony was taken as *applicable to all the cases.* It will be found from page 101 to page 167 of the Record.

The repairs done to the vessel by the appellants were all done by the direction and at the instance of the master, [D. C Childs,] whose approval is attached to the bills. They were ordered on the credit of the ship. (See deposition of Williamson, page 121, and Carey, page 122.) The repairs were then necessary *by implication of law.* [See opinion of S C. U. S. in the Bark Grapeshot p. 6.] They were, also, necessary *in paint of fact* to enable the vessel to proceed on her voyage. (See depositions of Williamson and Carey, pp. 121, 122.] In regard to these facts there is no conflict of evidence. The steamer was owned and enrolled in New York; Baltimore was not therefore her home port.

The question in the case then is: are necessary repairs done to a vessel in a foreign port, at the instance of the master, and under the circumstances detailed in the evidence, a lien on the vessel?

The recent case of the BARK GRAPESHOT, lately decided by this court, would seem to furnish a complete answer to the views heretofore urged in opposition to the validity of this lien.

The CHIEF JUSTICE in deciding this case below, felt "constrained by the unanimous judgment of the Su-

preme Court," in Pratt vs. Reed, as he then understood it, to reverse the decree of the District Court in this particular libel; at the same time, however, he "admitted" that he "had found no other case" requiring such proof as that required by Pratt vs. Reed, and he therefore declined to pass decrees in the other cases pending and submitted to him until the appeal in this case could be heard and determined.

The true interpretation of Pratt vs. Reed, having been given in the case of the 'Neversink' by the learned Judge, who delivered the opinion of this Court in Pratt vs. Reed, and that interpretation having been adopted in the clear and elaborate opinion just pronounced by the Chief Justice in the Grapeshot, there remains nothing to prevent a reversal of the Decree heretofore pronounced by the Circuit Court. The general principles announced in the 'Grapeshot' declare that liens for repairs can be enforced in admiralty on showing that the repairs were furnished in a foreign port and were necessary to enable the vessel to proceed on her voyage; that the repairs being ordered by the master on the credit of the ship implies the necessity. These three facts combining, the lien follows as a matter of course, unless there is *proof by the claimants*, that there were funds in the hands of the master to meet the cost of repairs, or that the credit to the vessel was unnecessary. No such proof is furnished, or attempted to be furnished by the claimants. The record is wholly without any such evidence, nor could such evidence have been furnished.

As to the question of ordering
The Chusan 2 Story Cir C. 464
The Martin 1 Sumner 305
Henderson v Moylan 2 Gall 409
The Guy 9 Wheaton
Reeder v Georgia Circuit 3 L.R.

The proof is, that the vessel was mortgaged in August, 1866, by the owners to the claimants for the sum of $12,000, that is to say, for about $2,000 more than she was worth, according to the result of the sale made in Baltimore; this mortgage was long overdue and unpaid at the time of the libels filed. The work done by the appellants, for which *this claim is filed*, was all furnished after the period when the mortgage was created, applying, according to the rule of law, the credits to the bills first created. So that at the time of the repairs confessedly needed, the owners had created a mortgage over and above the value of the steamer, which they had been unable to liquidate, and th effort here is to appropriate the labor and materials of the libellants towards the payment of that mortgage. Suppose the onus of showing that the necessity for credit to the ship exist d still remained on the libellants, would the facts just stated prove that those owners could have obtained credit in a strange city, without security, and simply on their personal responsibility?

But what further appears?—It is proved that the steamer was largely in debt to Mr. Keeling, the agent, [see Johnson's testy p. 126,] at the *very time that this bill was contracted*, and *that he was unwilling to advance any more on her account*. Not only, therefore, no funds in the hands of the agent, but the agent himself unwilling to trust the owners another dollar. Does this not show the necessity for the credit to the vessel?

Again, Mr. Bailey proves that the owners and master of the Steamer had not, so *far as he had been able to ascertain*, any credit in the city of Baltimore. Here the enquiry was made and the result was, that they had no credit in the port of Baltimore, where the repairs were done.

Further than this, all the witnesses, libellants, agent and clerk, swear that the respective bills could not have been contracted except upon the credit of the steamer; that they would not have credited the parties ascertained to be the owners, so that, if even the incorrect interpretation of certain expressions in Pratt vs. Reed still embodied the true rule of Admiralty law and the decision in the case of the Grapeshot had never been pronounced, would it not be a fair inference of fact to be drawn from the overdue and unpaid mortgage to a larger amount than the value of the steamer; from the want of funds in the hands of the agent and his unwillingness to increase the indebtedness one cent; from the result of Mr. Bailey's enquiries; from the united testimony of all the libellants; from the actual non-payment of the bills themselves by the owners, and particularly from the absence of the slightest proof on the part of the claimants of the pecuniary ability of the owners, that the *necessity for credit to the ship actually existed* at the time of the creation of the bills. In either view it is confidently insisted that the Decree must be reversed.

ORVILLE HORWITZ,
GEO. H. WILLIAMS,
Proctors for Libellants.

HENRY R. HAZELHURST
AND
WILLIAM D. WEIGAND,
APPELLANTS,

vs.

THE STEAMER "LULU,"
The New York Guaranty and Indemnity Company, Claimants.
APPELLEES.

SUPREME COURT
OF THE
UNITED STATES.
No. 216.

APPELLEES' BRIEF.

On the 11th March, 1867, James A. Skinner and Wm. H. Forsyth, filed a libel against the Steamer "Lulu," registered in the Custom House at New York, then lying in the Port of Baltimore, to subject her to a lien for repairs. Subsequently nine other libels were filed against her for repairs, and for supplies. The libel of Coleman & Bailey was the only one that contained any averment of a necessity for a credit to the Steamer. Rec. 93, (Ch. J. Chase's Opn.)

The cases were consolidated by order of Court, and the Lulu was sold and proceeds brought into Court, amounting after payment of Marshal's fees and expenses of sale, to $8,796 21. Rec. 96.

The New York Guaranty and Indemnity Company intervened as claimants and filed answers, in substance the same.

The answers state that the vessel was on 24th August, 1866, mortgaged to the claimants to secure a loan of $12,000, (Rec. 22, 23,) and the evidence shows that the Company took every precaution to be assured that no liens existed against it; as appears by the certificates from the Custom House of New York, and the County Clerk's office of New York city. Rec. 86, 87, 88; Brightly's Digest, p. 833, sec. 44.

The "Lulu" commenced running between Baltimore and Charleston in April, 1866, and continued to do so until March, 1867, about which time she was attached in these suits. Rec. 79, 80.

David F. Keeling was her agent in Baltimore, and collected the freights here and in Charleston. Rec. 79.

A decree was rendered in the District Court on 19th June, 1867, in favor of the Libellants, Rec. 50; all costs to be paid out of the funds. In November, 1868, a decree reversing that of the District Court, was rendered in the Circuit Court in favor of the claimants from which Hazelhurst & Weigand appealed; their claim being the only one large enough to give this court jurisdiction; and the residue of the funds was reserved to await the further decree of the Circuit Court. Rec. 93.

Hazelhust & Weigand between July 31st, 1866, and 14th March, 1867, on ten different occasions furnished repairs to the Lulu, amounting in the whole to $4,203 35, and which are contained in ten different bills filed with the libel. Rec. 34–5–6–7–8–9. The first bill for work done from July 31st, to August 7th, shows a balance due of $1,915 35; that amount was increased to $3,528 29 up to 31st October, when the first payment was made, and then only $600 was paid. Yet the terms on which the work labor and materials were furnished by the appellants *were cash*. Two witnesses only were examined on behalf of Hazelhurst & Weigand. Carey, Rec. 64–5, and Williamson, Rec. 64, whose cross examination appears in Rec. 72.

Keeling, the agent of the Lulu, was often called on "and found particularly slow in paying." See evidence of Williamson the managing agent, and afterwards co-partner of appellants. Rec. 72.

The Bills filed with this libel are fair samples of those filed with its associates. Skinner & Forsyth's libel (Rec. 3) charges that during the months of October, 1866, and March, 1867, and the intervening months they furnished repairs to the amount of $908 14, not one cent of which was paid.

Holmes & Holmes Bill running for the same time $624 27, nothing paid on it; Rec. 16, 17, 18. Kimberley's bill, running from September to March, $558 38, nothing paid on it. Rec. 32,

36. Coleman & Bailey's from Nov. 26th, to Feb. 19th, $787 nothing paid on it. Rec. 83, 4, 5, 6.

The liens allowed by the District Court amounted in all $9,846 13; but the proceeds of the Lulu in Court after payment expenses of sale being only $8,796 21, that sum was divided *pro rata* among the libellants. Rec. 50.

By turning to the deposition and account of Keeling, (Rec. 79 to 83,) it will be seen that the earnings of the Lulu from November 30th to February, were . . . $15,614

Add to this the amount received, after the account, showing that balance was made up, between $1,500 and $1,700; (Rec. 154,) say, . . 1,600

And they aggregate, ... $17,214

This sum was earned in three months during the worst season.

From April, 1866, to March, 1867, inclusive, (11 months.) (See Ch. J. Chase's Opinion, Rec. 91,) if the vessel only earned at the rate she did in the winter months, her earnings should have been $63,049 14. With this income she was, through the culpable negligence of the libellants, or from a desire to retain the friendship of a valuable customer, allowed to run up chiefly from November to February, (Ch. J. Chase's Opinion, Rec. 91,) an indebtedness of $9,846 13.

It is not pretended that any one of the libellants ever notified the owners or the mortgagee of their claims; or did anything to advertise them that their vessel, in the hands of their agent, was running up bills at a rate which would sink her whole value, three times a year, and absorb all of her earnings.

Estimated annual earnings,	$63,049 14
Indebtedness, from November to March, being the aggregate of the sums claimed in the libels and allowed in the decree,	$9,846 13
Vessel sold for	$10,250 00

(Marshal's return of sales, Rec. 14.)

The foregoing statement taken in connection with the succinct statement of facts embraced in the opinion of the Chief Justice, is a sufficient explanation of the case for the purposes of this argument.

The "Lulu" commenced running between Baltimore and Charleston in April, 1866, and continued to do so until March, 1867, about which time she was attached in these suits. Rec. 79, 80.

David F. Keeling was her agent in Baltimore, and collected the freights here and in Charleston. Rec. 79.

A decree was rendered in the District Court on 19th June, 1867, in favor of the Libellants, Rec. 50 ; all costs to be paid out of the funds. In November, 1868, a decree reversing that of the District Court, was rendered in the Circuit Court in favor of the claimants from which Hazelhurst & Weigand appealed; their claim being the only one large enough to give this court jurisdiction; and the residue of the funds was reserved to await the further decree of the Circuit Court. Rec. 93.

Hazelhust & Weigand between July 31st, 1866, and 14th March, 1867, on ten different occasions furnished repairs to the Lulu, amounting in the whole to $4,203 35, and which are contained in ten different bills filed with the libel. Rec. 34–5–6–7–8–9. The first bill for work done from July 31st, to August 7th, shows a balance due of $1,915 35; that amount was increased to $3,528 29 up to 31st October, when the first payment was made, and then only $600 was paid. Yet the terms on which the work labor and materials were furnished by the appellants *were cash*. Two witnesses only were examined on behalf of Hazelhurst & Weigand. Carey, Rec. 64–5, and Williamson, Rec. 64, whose cross examination appears in Rec. 72.

Keeling, the agent of the Lulu, was often called on "and found particularly slow in paying." See evidence of Williamson the managing agent, and afterwards co-partner of appellants. Rec. 72.

The Bills filed with this libel are fair samples of those filed with its associates. Skinner & Forsyth's libel (Rec. 3) charges that during the months of October, 1866, and March, 1867, and the intervening months they furnished repairs to the amount of $908 14, not one cent of which was paid.

Holmes & Holmes Bill running for the same time $624 27, nothing paid on it ; Rec. 16, 17, 18. Kimberley's bill, running from September to March, $558 38, nothing paid on it. Rec. 32,

36. Coleman & Bailey's from Nov. 26th, to Feb. 19th, $787 58, nothing paid on it. Rec. 83, 4, 5, 6.

The liens allowed by the District Court amounted in all to $9,846 13; but the proceeds of the Lulu in Court after payment of expenses of sale being only $8,796 21, that sum was divided *pro rata* among the libellants. Rec. 50.

By turning to the deposition and account of Keeling, (Rec. 79 to 83,) it will be seen that the earnings of the Lulu from November 30th to February, were . . . $15,614 33

Add to this the amount received, after the account, showing that balance was made up, between $1,500 and $1,700; (Rec. 154,) say, . . 1,600 00

And they aggregate, ... $17,214 33

This sum was earned in three months during the worst season.

From April, 1866, to March, 1867, inclusive, (11 months.) (See Ch. J. Chase's Opinion, Rec. 91,) if the vessel only earned at the rate she did in the winter months, her earnings should have been $63,049 14. With this income she was, through the culpable negligence of the libellants, or from a desire to retain the friendship of a valuable customer, allowed to run up chiefly from November to February, (Ch. J. Chase's Opinion, Rec. 91,) an indebtedness of $9,846 13.

It is not pretended that any one of the libellants ever notified the owners or the mortgagee of their claims; or did anything to advertise them that their vessel, in the hands of their agent, was running up bills at a rate which would sink her whole value, three times a year, and absorb all of her earnings.

Estimated annual earnings, $63,049 14

Indebtedness, from November to March, being the aggregate of the sums claimed in the libels and allowed in the decree, $9,846 13

Vessel sold for $10,250 00

(Marshal's return of sales, Rec. 14.)

The foregoing statement taken in connection with the succinct statement of facts embraced in the opinion of the Chief Justice, is a sufficient explanation of the case for the purposes of this argument.

The decree of the Circuit Court was rendered on the authority of the cases of Thomas & Osborne, and Pratt & Reid, in 19 Howard, but those cases have been explained by the court in the Grapeshot, 9 Wallace, 129; and it remains to inquire, whether by the principles laid down in that case, the claim of the claimants can be maintained. The Grapeshot decides that there must be:

1. A necessity for the repairs.

2. The credit must have been given to the ship—not to the owner, master or agent.

3. When necessity for repairs is shown, and that the credit was given to the ship, then a presumption of necessity for the credit will arise, *conclusive in the absence of evidence to the contrary, if the material man has acted in good faith.* 9 Wallace, 141.

4. But the material man will have no lien, if the master or agent had funds, of which the material man could have informed himself by proper and reasonable inquiry. 9 Wallace 137.

The necessity for repairs we admit, but we deny that the credit was given to the ship, or that the material men acted in good faith, and made proper and reasonable inquiry.

It is impossible to read the testimony of Williamson, the chief manager and partner of Hazlehurst & Weigand, (Rec. 72,) and doubt, that whatever may be the stereotyped affidavit that the credit was given to the steamer, that in point of fact it was given to the agent Keeling.

Keeling was a merchant, acting as agent for a large number of vessels; loading 15 or 20 a week. (See Keeling's Ev., Rec. 80.)

Williamson had frequent occasion to see him on business, and frequently dunned him for this debt.

Now, whether the forbearance to enforce prompt payment for *cash work* proceeded on the part of the libellants from a friendly feeling, which inspired this indulgence, or from the selfish motive of keeping up business relations with one largely engaged in the shipping business, they are not material men acting in good faith, who are entitled to an hypothecation of the steamer.

They knew the vessel was earning freights; they had seen her for many months plying between the harbors of Baltimore and Charleston; they knew that out of her earnings her expenses

ought to be paid, and in point of fact, out of her earnings from November 30th to end of February, her earnings were more than sufficient to pay this indebtedness, being $15,614 33, and subsequently received $1,700, say $17,314 33. (Rec. 82, 3.) And when they were not paid regularly, as they ought to have been, it was their duty to stop furnishing materials, or else call on the owners for explanations and for advices, whether they should make further repairs. But neither did Hazlehurst and Weigand, nor any one of the nine libellants, advise the owners of the state of affairs, or present their bills to them, or inquire whether they should go on crediting the *Lulu*. Could the loss which is to be sustained by the material men or the mortgagees, have ever accrued if this simple act of prudence and justice had been done.

The fourth proposition in the Grapeshot, 9 Wallace 141, only recognizes the lien of the material man who "*acts in good faith.*"

The principle is too well settled to need extensive argument, that where there exists facts which ought to put a party on inquiry, it is a fraud not to inquire, and that where there are such facts they constitute constructive notice.

Mr. Justice Duer, in Prengle vs. Phillips, 5 Sandford, 171-2, fully discusses this doctrine, and lays down the rule as stated.

His language is "the principle of the doctrine of constructive notice is, that when a person is about to perform an act by which he has reason to believe that the rights of a third person may be affected, an inquiry into the facts is a moral duty, and diligence an act of justice. Hence, he proceeds at his peril when he omits to inquire, and is then chargeable with a knowledge of all the facts, that by a proper inquiry he might have ascertained. This neglect is followed by all the consequences of bad faith, and he loses the protection, to which his ignorance, had it not proceeded from neglect, would have entitled him."

Under the decision in the Grapeshot, we do not contend that the libellants were bound to prove a necessity for a credit, but we do contend that it means, by its true construction, if the libellants *knew that the master or agent had funds*, "or has the means by the use of due diligence to ascertain" that fact, then a lien against the vessel does not arise. In this respect the opinion of the court in

the Grapeshot, harmonizes with, and re-affirms the doctrine laid down in Thomas & Osborne 19, Howard 31; where the court employs this language; "if the lender knows these facts," viz. [that the master has funds of the owners,] "or has the means by the use of due diligence to ascertain them, then no case of apparent necessity exists to have a credit; and the act of the master in procuring a credit, does not bind the interest of the general owners in the vessel."

Mr. Justice Neilson, who delivered the opinion in *Pratt & Reid*, and whose construction of that case and the case of *Thomas & Osborne* in the cases of the *Guy & Neversink* the Supreme Court refers to as interpreting with precision the law of those cases, says: "as to the sufficiency of the proof of this apparent necessity, no fixed rule, from the great diversity of cases that arise, can be laid down in advance. It must necessarily rest in the sound judgment of the tribunal, before which the proofs are presented. Good faith and fair dealing are exacted on the part of the person furnishing the supplies in every case; and the absent owner should be guarded against collusion of the master with material men, or furnishers of supplies; and against an *unnecessary tacit incumbrance* on his vessel."—*Justice Neilson's opinion in the Neversink.*

The same Judge in commenting on Pratt & Reid, says: "the necessities for repairs and lien upon the vessel, to enable the master to procure them, are insisted on there, as essential elements to support the lien, and in respect to the soundness of which there can be no controversy; but the necessity in both instances, (for repairs and lien,) must depend upon the facts and circumstances of the case. In Pratt & Reid, *they repelled the necessity of a lien.* In the present case *we hold they support* it. We are not aware that any other rule has ever been established."—*Decision of Mr. Justice Neilson in the Young Tall.*

Did not these creditors know that she was earning freights which ought to be dedicated to the necessities of the ship? Baltimore is a small port, from which in 1866, but a few sea steamers sailed. Whether she sailed and returned with or without cargo, and the amount of her cargo and its character, were facts perfectly

well known to all persons having transactions with vessels, and especially to those whose business it was to supply or furnish work on vessels. If she were earning freights, then her agent had means to pay these bills, and the account of Keeling for the last three months furnish, in the absence of proof to the contrary, evidence that she had made freights amounting to much more than sufficient to pay all these bills.

The outrageous frauds which the criminal negligence of the libellants enabled Keeling to perpetrate upon the owners, will be more apparent upon a close examination of his account. (Rec. 81, 3.) It shows an indebtedness of the owners to him of $19,000, reduced by the freights of the vessel receivid from Nov. 30th to last of February, amounting to $15,614 33, plus $1,500 to $1,700, say $17,214 33.

The alleged indebtedness to him arises by payments on account of the ship, commencing June 25th, 1866, and ending November, 1866, say five months.

But the ship during all that time was earning freights; with these he did not charge himself, but applied to the payment thereof, or to the re-payment to himself of that sum, her earnings from Nov. 30th to March, 1867. In a word, five months of freight, he is enabled by the creditors to embezzle, and does not pretend to give any account of. Thus, eight months of freights, equal $45,904 88
and the value of the vessel, $10,250 00
are sunk, and a balance of debt left, being the difference between the sums allowed by the decree, and the pro rata division of the proceeds of sale.

These maritime liens are only given in the interests of commerce, and are not favored by the courts. They are allowed only from the necessities to which vessels in foreign ports may be exposed. In their origin they were never designed to apply to vessels in their own country, nor ought they now to apply to those vessels, which, though in reality, belonging to a common country, by a pure fiction, are deemed foreign vessels because owned by citizens of other states than those where she chances to be, except in cases of extreme necessity.

It was a mooted question, until the decision in the General

Smith, 4th Wheaton, 443, whether the ships of one state, were foreign as to another.

The opinion on that point, as was also the opinion in Peyrous *vs.* Howard, 7 Peters, 341, on the same point, was *obiter dicta;* but it has since been received as the rule of decision on the subject. But were the question a new one, now for the first time to be decided, it is believed that a different rule would govern. For if there be anything that is especially national, and withdrawn from the operation of state laws, it is a vessel, whose home is *a port*, not a state—whose flag is that of the Union, and not of any state—where national officers watch her, and control her, and tax her—and national Custom Houses constitute the repositories of her papers.

In O'Hara *vs.* Ship Mary—Bee's Report, 102—the Court uses this language: "To constitute a right to hypothecate the ship, there must be urgent necessity in a foreign port, and a total want of sufficient personal credit, 3 Modern, 244."

"The power vested in a master to impawn his owner's ship or goods for necessaries *furnished* in a FOREIGN port, *is a legal indulgence founded on the urgency* of the case, and intended for the general benefit of commerce. 'There are few rules of law,' says a late writer on the subject, 'more strictly defined than this; and none in which the reason and intention of the law are more manifest.' The books are full and consistent upon this point of necessity. 'Where money,' says Lord Raymond, 'is borrowed on a ship before the voyage is begun, she is not answerable in the Admiralty.' (1 Raymond, 578; 2 Raymond, 982.) 'The law means to favor the *completion, not the commencement* of a voyage.' Before the voyage is begun, and in ports where the owners reside, the necessity in question cannot exist. In FOREIGN ports, great distress might arise from circumstances of invincible necessity and the want of personal credit; of these alone will Courts of Admiralty take notice; otherwise, the power of the master to take up money might be ruinous to his owners, without promoting the general interests of commerce."—Bee's Report, 133.

The Lulu while obtaining necessaries in the port of Baltimore, made *eleven distinct voyages* to Charleston and back. These repairs and supplies were all made, in the language of Lord Ray-

mond, not "*to favor the completion of a voyage,*" but "*the commencement*" of eleven distinct voyages.

This is an attempted innovation upon the ancient and well established principles of the Admiralty law. It has no precedent to support it; and arrayed against it, are the principles of sound maritime policy, and commercial fair dealing.

The court in its decision in the Grapeshot in no wise impairs the force of its language, as employed in Pratt & Reid, where it says "these maritime liens in the coasting business, and in the business upon the lakes and rivers are greatly increasing, and as they are tacit and secret, not to be encouraged, but should be strictly limited to the necessities of commerce which created them. Any relaxation of this law in this respect, will tend to perplex and embarress business, rather than furnish facilities to carry it forward." Pratt & Reid, 19 Howard, 361, 2.

If the Libellants ever had a lien, it is lost by their allowing the vessel to leave the port on so many voyages. 2d Woodbury & Minot, 98—99—104.

WM. MEADE ADDISON,

for N. Y. G. & I. Co., Appellee, Claimants.